FEB 20 1956
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 579 MISC.

EMIL RECK,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

EDMUND HATFIELD,
7 South Dearborn Street,
Chicago 3, Illinois,
Attorney for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

PAGE

Opinion Below 1

Jurisdiction 1

Questions Presented 2

Constitutional Provisions and Statutes Involved 4

Statement 6

1. The Peacock Murder Case 6
2. The Arrest and Incommunicado Detention of Petitioner 7
3. The Questioning of Petitioner by Police and Prosecutors 9
4. The Mentality and Personality of Petitioner 14
5. The Illness and Hospitalization of Petitioner During His Illegal Detention 19
6. Beatings and Physical Mistreatment of Petitioner by Police 23
7. Medical Testimony 31
8. Decisions Below 38
   a. In the Criminal Trial 38
   b. In Post-Conviction Proceedings 40
9. Manner of Raising and Preserving Federal Questions 41

Reasons for Allowance of the Writ 44

I. The Supreme Court of Illinois Has Herein Decided a Federal Constitutional Question of Substance in a Way Not in Accord with Applicable Decisions of This Court 44

A. The Opinion of the Court Below Fails to Recognize That Confessions May Be Coerced by Purely Mental Means, Such as Incommunicado Detention and Prolonged Interrogation.

This Is Not in Accord with the Applicable Decisions of This Court, a Long Line of Which Hold That Mental Means May Be as Coercive as Physical, That Use of a Confession Based on Either of Them to Procure a Conviction Is Denial of Due Process and Is a Violation of the Accused's Rights Under the Fourteenth Amendment..... 46

B. The Decision of the Court Below Is Not in Accord with the Decision of This Court in *Chambers* v. *Florida*, 309 U. S. 227.

Here Too the Undisputed Facts Show That Mental Compulsion Was Applied.... 49

C. The Decision Below Is Not in Accord with the Decision of This Court in *Watts* v. *Indiana*, 338 U. S. 49.

The "Suction Process" of Unrelenting Interrogation to Which Petitioner Was Subjected Over a Period of Four Days for the Purpose of Wrenching from Him Evidence Which Could Not Be Obtained from Him in Open Court, with Its Safeguards, Was a Species of Coercion.

Use of Incriminating Statements Thus Extracted from Him to Obtain His Criminal Conviction Denied Him Due Process of Law 50

D. The Decision Below Is Not in Accord with the Decision of This Court in *Haley* v. *Ohio*, 332 U. S. 596.

The Incommunicado Detention and Prolonged Interrogation of a Mentally Retarded Adolescent, Such as Petitioner Then Was, for the Purpose of Extracting Confession from Him, Constitutes Coercion and Renders the Incriminating Statements So Obtained Coerced Confessions..... 53

E. The Decision Below Is Not in Accord with the Decision of This Court in *Ziang Sung Wan* v. *United States*, 266 U. S. 1.

The Persistent Interrogation of Petitioner, After He Was Taken Acutely Ill,

Fainted Several Times, Vomited, Required Hospitalization and Was Weak and in Continuing Abdominal Pain, Was Coercive.

The Undisputed Facts Show Mental Compulsion Was Applied to Reck. As to That, There Was No Issue Upon Which a Jury or Trier of Facts Should Have Been Required or Even Permitted to Pass.

Because the "Confessions" Were Not Excluded Petitioner Was Denied Due Process of Law..... 56

II. The Evidence That Petitioner Was Also Physically Coerced Is Cogent and, in the Admitted Circumstances, Convincing.

The Finding That He Was Not Physically Coerced Is Manifestly Against the Weight of the Evidence, Candidly Considered, and Should Be Reversed..... 58

III. The Post-Conviction Court Dismissed This Post-Conviction Petition Without Reading or Even Seeing (According to Its Own Statement) the Transcript of Evidence re the Voluntariness or Involuntariness of Petitioner's Confessions, Heard in the Murder Trial, Outside the Presence of the Jury, and Introduced Into Evidence in the Post-Conviction Proceeding

This Transcript, Consisting of More Than 400 Pages, Contains the Testimony of Reck (Over 100 Pages), the Testimony of the Leading Participants in the Securing of the Confessions and Much Medical Testimony. It Is the Best Evidence Available on the Matters in Issue.

By Failing to Examine This Evidence the Post-Conviction Trial Court Not Only Committed Reversible Error, But Deprived Emil Reck Once More of Due Process of Law..... 60

Conclusion 62

Appendices:

A.—Opinion of Burke, J., in the Criminal Court of Cook County, Illinois, May 12, 1936, Admitting the Confessions in Evidence in the Murder Trial 63

B.—Opinion of Covelli, J., in the Criminal Court of Cook County, Illinois, May 1, 1953, Denying Reck's Post-Conviction Petition 65

C.—Opinion of Bristow, J., in the Supreme Court of Illinois, November 23, 1955, Accompanying Judgment of Affirmance 68

D.—Judgment of Supreme Court of Illinois, November 23, 1955, Affirming Judgment of the Criminal Court of Cook County Denying Reck's Post-Conviction Petition 74

AUTHORITIES CITED.

Cases.

Ashcraft v. Tennessee, 322 U. S. 143 47

Brown v. Mississippi, 297 U. S. 278 ..... 46, 60

Carter v. Illinois, 329 U. S. 173, 175 61

Chambers v. Florida, 309 U. S. 227, 228, 239 ..... 46, 49, 50

Commonwealth of Pennsylvania ex rel. Herman v. Claudy, Warden, ... U. S. ...., 76 S. Ct. (ad. sh.) 223, 224 46

Haley v. Ohio, 332 U. S. 596, 599-601 ..... 47, 53, 54, 55, 56

Harris v. South Carolina, 338 U. S. 68 47

Lee v. Mississippi, 332 U. S. 742, 744, 745 48

Leyra v. Denno, 347 U. S. 556 46

Lisenba v. California, 314 U. S. 219 47

Lyons v. Oklahoma, 322 U. S. 596, 605 47

Malinski v. New York, 324 U. S. 401, 404 47

Marino v. Ragen, Warden, 332 U. S. 561, 570..... 61
People of the State of Illinois v. Kelly, 404 Ill. 281... 53
People of the State of Illinois v. Reck, 392 Ill. 311.... 40
Reck v. People of the State of Illinois, 7 Ill. 2d 261, 130 N. E. 2d 200.....1, 41, 68
Reck, Petitioner v. State of Illinois, 331 U. S. 855 (cert. denied, 1947)..... 40
Stein v. New York, 346 U. S. 156..... 47
Stroble v. California, 343 U. S. 181..... 47
Turner v. Pennsylvania, 338 U. S. 62..... 47
Watts v. Indiana, 338 U. S. 49, 53, 54.....47, 50, 51, 52
Ziang Sung Wan, 266 U. S. 1, 17.....56, 57, 58

United States Constitution.

Fourteenth Amendment.....2, 42, 43, 46, 47, 62

Statutes.

Illinois Post-Conviction Hearing Act (Ill. Rev. Stat., ch. 38, §§ 826, 827, 830, 831).....4, 5, 6, 40, 41

Miscellaneous.

"Wickersham Report": "Report on Lawlessness in Law Enforcement" Report No. 11 of National Commission on Law Observance and Enforcement (1931), p. 153..... 48

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. .....

EMIL RECK,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Your petitioner, Emil Reck, plaintiff-in-error below, respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois, entered on November 23, 1955. (R. 1125.) (See Appendix D.)

OPINION BELOW.

The opinion of the Supreme Court of Illinois, dated November 23, 1955, is reported at 7 Ill. 2d 261 (ad. sheets), 130 N. E. 2d 200 (ad. sheets). It is set out in the transcript of proceedings (R. 1121-4) and in Appendix C of this petition.

JURISDICTION.

The jurisdiction of this Court is invoked under Title 28, U. S. Code, § 1257.

QUESTIONS PRESENTED.

The principal question is whether a conviction of murder, resulting in a sentence of 199 years in the penitentiary, was without due process of law and in violation of petitioner's rights under the Fourteenth Amendment to the Constitution of the United States in that it was predicated upon confessions which it is claimed were coerced because obtained in the following undisputed circumstances:

Petitioner was arrested without a warrant. He was held seven days before he was taken before a magistrate. During this time he was, until he made the oral confession of murder, on the fourth day of his arrest, subjected to protracted, severe cross-examination by police and prosecutors for many hours daily. Petitioner was denied access to relatives and friends until at least the fifth day of his arrest, that is, until he had signed the two written confessions of murder. He was denied access to counsel until at least the seventh day after his arrest. At that time petitioner was an adolescent of 19, who had failed to complete 7th grade when he dropped out of school at 16. Throughout his life he had been repeatedly classified as mentally retarded and deficient by psychologists and psychiatrists of the Institute for Juvenile Research in Chicago and he had at one time been committed to an institution for the feebleminded, where he had spent a year. During the protracted questioning of him by the police, and shortly before he made the confessions, he had been taken ill, had vomited blood, had fainted several times and had twice been taken on a stretcher to the Cook County Hospital in Chicago, where he had twice received injections of morphine. Were the confessions of murder obtained from petitioner in these undisputed circumstances coerced?

A further question is presented by petitioner's conten-

tion that the confessions were coerced because of the additional circumstance, which is denied by respondent, that petitioner was severely beaten and physically mistreated by the police on each of the three days immediately preceding his confessing, that his illness and hospitalization resulted from these beatings, and that he confessed to this crime, which he did not commit, only in order to avoid being further beaten, as was threatened by the police, and in order to obtain needed treatment, promised by the police, for his painful injuries.

A further question is presented as to whether petitioner was also denied due process of law in that the trial court in the post-conviction proceedings dismissed the post-conviction petition without reading or even seeing—according to its own statement—the transcripts of evidence re the voluntariness or involuntariness of petitioner's confessions, heard in the murder trial, outside the presence of the jury, and introduced into evidence as exhibits in the post-conviction proceeding. These transcripts of evidence presented within six weeks after the making of the confessions, consist of more than 400 pages and contain the testimony of petitioner (over 100 pages), the testimony of the leading participants in the securing of the confessions and much medical testimony. (This point was clearly made in the brief filed by petitioner in the Supreme Court of Illinois and in oral argument before it, but was not mentioned by that court in its opinion.)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Fourteenth Amendment to the Constitution of the United States:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Illinois Post-Conviction Hearing Act (Ill. Rev. Stat. ch. 38, §§ 826, 827, 830, 831):

> "§ 826. Proceeding to determine whether constitutional rights were denied.—Petition.—Limitations.
>
> "Any person imprisoned in the penitentiary who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of Illinois or both may institute a proceeding under this Act. The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place a petition (together with a copy thereof) verified by affidavit. Petitioner shall also serve another copy upon the state's attorney by any of the methods provided by Rule 7 of the supreme court. The clerk shall docket the petition upon his receipt thereof and bring the same promptly to the attention of the court. No proceeding under this Act shall be commenced more than five years after the rendition of final judgment, or more than three years after the effective date of this Act, whichever is later, unless the petitioner alleges facts showing that the delay was not due to his culpable negligence. 1949, Aug. 4, Laws 1949, p. 722, § 1."

"§ 827. Petition—Contents—Affidavits.

"The petition shall identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and shall clearly set forth the respects in which petitioner's constitutional rights were violated. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. The petition shall identify the previous proceedings that the petitioner may have taken to secure relief from his conviction. Argument and citations and discussion of authority shall be omitted from the petition."

"§ 831. Hearing—Evidence—Order.

"The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to rearraignment, retrial, custody, bail or discharge as may be necessary and proper."

"§ 832. Review.

"Any final judgment entered upon such a petition may be reviewed by the supreme court on writ of error brought within six months from the entry of the judgment."

STATEMENT.

The judgment here sought to be reviewed was entered by the Supreme Court of Illinois in a proceeding brought under the Illinois Post-Conviction Hearing Act (Ill. Rev. Stat., ch. 38, §§ 826-832). Under this statute, any person imprisoned in a penitentiary of that State, who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States is afforded a review of that federal constitutional question.

The conviction of petitioner was for murder. This was entered on May 29, 1936, when petitioner was 19 years old, by the Criminal Court of Cook County in Chicago, Illinois, in the case of The People of the State of Illinois *vs.* Emil Reck, No. 36-0459. The sentence imposed was for 199 years. Petitioner is presently serving this sentence in the State Penitentiary at Stateville, Illinois.

1. The Peacock Murder Case.

The murder of which petitioner was convicted was that of Dr. Silber C. Peacock of Chicago. (R. 222, Abst. 84.) The killing of Dr. Peacock, with no known eye-witnesses and practically no clues, baffled the police for months. And the "Peacock mystery" was front page news, day after day, for months.

Dr. Peacock was a well established Chicago pediatrician. On the night of January 2, 1936, according to his wife's testimony, he received a telephone call at his apartment. (R. 509-511, Abst. 147.) In answering the Doctor jotted down the notation: "Small G, 6438 North Whipple." (R. 512, Abst. 147.) He dressed, picked up his instrument case, took his car out of the garage and drove off. He did not return. The next morning he was reported missing.

The next afternoon his lifeless body was found, drenched in blood, slumped on the floor of the rear of his automobile (R. 540-543, Abst. 156, 157), parked at 6326 North Francisco Avenue. (R. 539, Abst. 156.) There were 13 deep lacerations on the top of his head. (R. 525-527, Abst. 151, 152.) A bullet had passed through his brain. (R. 527-529, Abst. 152, 153.)

There were not even fingerprints. (R. 545, Abst. 158.) The personal life of the Doctor was ransacked by investigators and reporters. A special committee of the Chicago Medical Society interested itself in the case. A reward was offered.

In the last week of March, 1936, almost three months after the death of Dr. Peacock, the crime was still unsolved, although hundreds of persons had been questioned. (R. 314, Abst. 100.)

2. The Arrest and Incommunicado Detention of Petitioner.

It was stipulated that petitioner was arrested on Wednesday, March 25, 1936. (R. 276, Abst. 91.) It is not disputed that the arrest took place at 11:30 o'clock in the forenoon of that day. (*idem.*) According to police testimony, originally Reck and two other 19 year old boys, Durland Nash and Robert Goethe, were arrested on suspicion of stealing bicycles. (A. 209, Abst. 99.) Reck was taken into custody without a warrant. (R. 51-54, Abst. 30, 31.) At the time of the arrest he was at the home of one of the other boys, acting peaceably. (R. 52, Abst. 31.) No resistance to the arrest was made. (*idem.*)

Officer Reilly, the policeman in charge of the earlier questioning of Reck (R. 293-297, Abst. 95; R. 932, Abst. 228), admitted that petitioner was not taken before a judge on Wednesday, the day he was arrested, nor on Thursday, and perhaps not on Friday. (R. 303, Abst. 96.)

Sergeant of Detectives Aitken, who was in charge of the Peacock investigation (R. 413, Abst. 130), testified that Reck was not charged with the commission of any crime when he first saw him on Friday, March 27, at 7 p. m. (R. 416, Abst. 131) and admitted that up to that time petitioner had not been brought before a court or committing magistrate. (R. 417, Abst. 131.)

It was not until April 2nd, 1936, that is, the following Thursday—more than a week after he was arrested—that petitioner was first brought before a magistrate. (R. 280, Abst. 92.) There is nothing to the contrary in the voluminous record. It is undisputed.

During these seven days between the time of his arrest and the time he was brought before a judge—to plead to a murder indictment—petitioner was without the advice of counsel. (R. 280-281, Abst. 92.) This too is not disputed.

As soon as petitioner was arraigned in open court he entered a plea of not guilty. (R. 13, Abst. 8.)

The only evidence of Reck's having access to the advice of relatives or friends during this period is the vague testimony of prosecutor Kearney that Reck's father saw him on Sunday (R. 351, Abst. 113)—that is, after Reck had made a confession of murder on Saturday, March 28. (R. 332, Abst. 106; R. 1032-1075, Abst. 274-294.) Assistant State's Attorney Varnes testified that when Reck was taken to the hospital on Friday evening (R. 426, Abst. 134)—when he had already been in custody almost 2½ days—his family was not notified.

The Public Defender entered an appearance for Reck on April 3, 1936, that is, the following Thursday. (R. 13, Abst. 8.) On Monday, April 7th, 1936, counsel of petitioner's own choosing (R. 42, 43, Abst. 25, 26) filed their appearance and the Public Defender withdrew as attorney for petitioner. (*idem.*)

3. The Questioning of Petitioner by Police and Prosecutors.

The long record is replete with the multitudinous details of the protracted, severe questioning of petitioner. As Officer Reilly testified: "For two or three days I and the other officers were questioning the prisoner." (R. 298, Abst. 96.)

There appears to be no dispute about the chronology of the interrogation.

Reck was taken directly to the North Avenue Police Station in Chicago (R. 54, 55, Abst. 31), upon being arrested at 11:30 a. m. on Wednesday, March 25th. (R. 276, Abst. 91.) There he was immediately questioned very sharply, but rather briefly by Officers Reilly, Susenbeck and Kula about theft of a saxophone.

At noon he was suddenly transported to the Shakespeare Avenue Police Station (R. 62, Abst. 32) and left there alone for two hours. (R. 63, Abst. 33.) At 2:15 p. m. he was brought back to the North Avenue Station. (R. 65, Abst. 33.) From then until 6 p. m. (R. 99, Abst. 40) he was questioned about various and sundry robberies by Captain O'Connell and Officers Reilly, Susenbeck and Kula. (R. 67, 68, Abst. 33; R. 72, 78, 79, Abst. 33, 34; R. 92-98, Abst. 38-39.) At 6 p. m. he was brought downstairs to a patrol wagon and that evening taken to the Warren Avenue Police Station and placed in a cell for the night. (R. 101, Abst. 40.) He was there given a baloney sandwich and coffee. (R. 102, Abst. 40.) Earlier in the day he had received a ham sandwich and coffee. (*idem.*) The only other trace of food given Reck up till the time of his confession on Saturday afternoon to be found in the record is the statement of co-defendant Livingston that three or four days after their arrival Reck was on a milk diet. (R. 812, Abst. 198.)

On the morning of Thursday, March 26, Reck was promptly returned to the North Avenue Station. Officer Reilly testified that he was with Reck all day Thursday. (R. 295-297, Abst. 95.) Captain O'Connell and Officers Susenbeck and Kula also participated fully in the day long questioning. (R. 110-112, Abst. 42.) Finally Reck told the police that he had a gun buried in a certain yard. They immediately took him there, but were unable to find a gun. (R. 112, 113, Abst. 42, 43.) The police then returned him to the North Avenue Station and resumed their questioning of him. (R. 114, Abst. 43.) Later in the day Reck told the police he had a gun under a shed, which was not true. He did not know whether the police investigated this, because he became sick on Thursday afternoon. (R. 121, Abst. 44.)

On Friday, March 27, Reck was further questioned by police officers at the North Avenue Station for 5 or 6 hours (R. 123, Abst. 45) before he fainted and was taken to a hospital on a stretcher. (R. 124, Abst. 46.)

Nash, another boy who had been arrested at the same time as petitioner (R. 53, 54, Abst. 31), and who in the meantime had been similarly interrogated, had confessed to a number of robberies and implicated Reck. (R. 123, 124, Abst. 45, 46.) Petitioner continued to deny being involved. (*idem.*)

When Reck was returned to the North Avenue Police Station after his first trip to the County Hospital at the end of about an hour (R. 187, Abst. 71), the police immediately resumed their questioning of him and continued it until 10:15 p. m. Friday, at which time Reck was again sent to the County Hospital on a stretcher. (R. 122, Abst. 45; R. 179-182, 186, Abst. 66, 67, 71.) In the interim Reck had vomited a large quantity of blood (R. 124, Abst. 46) and had fainted half a dozen times. (R. 125, Abst. 46.)

Upon his second arrival at the hospital, he was sent up to a ward, put to bed and given an injection of morphine, atrophine and ipacec, which was repeated at about 2 a. m. (R. 716, Abst. 176.)

While Reck was in bed at the County Hospital, at about midnight several police officers went to the home of another boy, Michael Livingston, aged 17, who had been arrested on Wednesday on suspicion of stealing bicycles (R. 753, Abst. 183), but had been released on Thursday evening. (R. 756, Abst. 184.) On being re-arrested Livingston was taken first to the North Avenue Station and then to the State's Attorney's Office. (R. 763, Abst. 185.) There he was questioned about the Peacock murder by First Assistant State's Attorney Crowley, in the presence of Chief of Detectives Sullivan and several other police officers. (R. 763-767, Abst. 185, 186.) When Livingston repeatedly denied having anything to do with the Peacock murder, he was confronted with Durland Nash (R. 767, Abst. 186), a 19 year old who had been arrested shortly before Reck on Wednesday morning (R. 53, 54, Abst. 31) and who had since been subjected to similar grilling. In Livingston's presence Nash reiterated a confession to the Peacock murder that he had made shortly before, implicating Goethe, Reck and Livingston. (R. 768, 769, Abst. 186.) Livingston called Nash a liar. (R. 769, Abst. 186.) When Livingston continued to deny guilt, he was taken to the Central Police Building (R. 772, Abst. 187) and there interrogated for two or three hours by Chief of Detectives Sullivan and three or four other officers. (Livingston testified that he was there subjected to severe physical abuse by the police (R. 763-785, Abst. 185-191), which was denied.) At about 3 a.m. Saturday Livingston agreed to sign a confession and repeated Nash's story. (R. 779, 780, Abst. 189.) (Upon arraignment Livingston pleaded not guilty and was tried with Reck. (R. 498, 503, Abst. 145.))

Before dawn on Saturday morning Nash, Goethe and Livingston were taken to the scene of the crime. (R. 782-784, Abst. 190, 191.) Goethe, also 19, had been arrested at the same time as Reck, had been subjected to similar prolonged interrogation, and had confessed to the Peacock murder shortly after Nash on Friday night. The re-enactment was actively participated in only by Nash and Goethe (R. 783, Abst. 190), both of whom upon arraignment pleaded guilty. (R. 882, 901, Abst. 214, 219.) At the time of the re-enactment Reck was in the County Hospital. (R. 182, 183, Abst. 67-69.)

At 9:30 a.m. on Saturday, March 28, Reck was removed from the County Hospital in a wheel-chair (R. 183, Abst. 69) and driven by Captain O'Connell back to the North Avenue Police Station. (*idem.*) He was kept there four hours. (R. 131, Abst. 48.) During this time he was questioned by Captain O'Connell and Officers Susenbeck, Burns and Reilly about the Peacock murder. (R. 127-129, Abst. 47.)

Reck testified that he was in intense pain at this time. This was not directly and specifically challenged by the prosecution, although by many innuendoes it sought to minimize his sufferings.

Reck's first, oral confession to the Peacock murder was made approximately 72 hours after he was arrested.

Early in the afternoon on Saturday, March 28, Reck was taken to the State's Attorney's Office. (R. 127, Abst. 49.) Reck denied ever having seen the gun. (*idem.*)

After spending the entire Saturday afternoon at the State's Attorney's Office with police and prosecutors, Reck and the three other boys, Nash, Goethe and Livingston were led into the private office of First Assistant State's Attorney Crowley to make a joint confession before a court reporter. (R. 135, Abst. 49; R. 1032, Abst. 274.) Also

present were Chief of Detectives Sullivan, Captain O'Connell, Officer Reilly, two other police officers, and Assistant State's Attorneys Crowley, Kearney and Varnes. (R. 1032, Abst. 274.)

The questions were uniformly directed first to Nash (and to a very slight extent to Goethe). The other boys, particularly Reck and Livingston, merely acquiesced in Nash's answers. (R. 793, Abst. 193; R. 1032-1075, Abst. 274-294.)

After this confession—the joint confession—had been typed, it was signed by Reck the next day, Sunday. (R. 348, Abst. 112.)

The next afternoon, Sunday, March 29, at 4:10 p.m., before a court reporter in the State's Attorney's Office in the presence of two prosecutors and a police officer (R. 983-996, Abst. 250-260) an individual confession was taken from Reck. *It was a reiteration of the joint statement.*

On Sunday evening, after the individual statements had been typed, Reck and the three other boys were led into the private office of Captain Daniel Gilbert in the State's Attorney's Office. Present were Assistant State's Attorneys Crowley, Kearney and Varnes, and several other police officers, including Officers Reilly and Kula. In the room there were also several physicians and several former grand jury members who had been asked by the State to attend as witnesses. Among the physicians present were a Dr. Scatliff and a Dr. Day, who testified for the State at the murder trial. Dr. Scatliff also testified for the respondent in the trial court in these post-conviction proceedings. At the hearing on the admission of the confessions, held outside the presence of the jury at the murder trial, Reck testified that no one introduced these witnesses to him and that he had no idea who they were (R. 142, Abst. 50); he did not know they were not police officers.

Assistant State's Attorney Kearney testified at the post-conviction hearing that this was the first time in his then four years' experience as a prosecutor that the State had fortified a confession with a "ceremonial" witnessed by such respectable outsiders as former grand jury members and physicians. (R. 354, Abst. 113, 114.) Kearney further admitted that he had arranged it in order to buttress his case against defense contentions of coercion. (*idem.*)

The individual confessions—not the joint confession—were read aloud to Reck and the three other boys in the presence of the guest witnesses. (R. 347, 348, Abst. 112.) Reck and each of the other boys each signed his individual confession. Photographers were present and told the boys to smile. (R. 157, 158, Abst. 55.) As soon as the ceremony was completed the boys were marched out of the room. They had no conversation with the witnesses.

On the following Thursday, April 2, 1936, an indictment was filed charging Reck and the three others with the murder of Dr. Peacock. Reck was then for the first time since his arrest on Wednesday, March 25, brought before a magistrate. (R. 13, Abst. 8; R. 280, Abst. 91, 92.) It was not until his appearance in court, more than a week after his arrest, that Reck had the advice of counsel. Reck then immediately entered a plea of not guilty (R. 13, Abst. 8) and has to this day—for almost 20 years—steadfastly maintained that he is innocent of the killing of Dr. Peacock.

None of the factual matter so far stated is in dispute.

4. The Mentality and Personality of Petitioner.

Who was it that was thus arrested, detained and held incommunicado by the police for more than a week? Who was so protractedly, so severely, so relentlessly cross-examined by a whole squadron of prosecutors, detectives and policemen?

The record in this case fortunately contains unusually full, undisputed, professional information concerning the psychological level and life experience of petitioner up to and at the time of his arrest and confession. This data comes from the archives of the Institute for Juvenile Research in Chicago, the Juvenile Protective Association, the Juvenile Court of Chicago and the Behavior Clinic of the Criminal Court of Cook County, Illinois.

Emil Reck had never been arrested before (R. 19, Abst. 12; R. 32, Abst. 23), was never a juvenile delinquent (R. 32, Abst. 23) and had no record of nervous or mental disease. (R. 16, Abst. 9, 10.) There had been no arrests in his immediate family, nor had there been in it any hospitalization for insanity. (R. 15, Abst. 8, 9.) But Emil Reck had through the years been periodically examined and was for a time under institutional care for mental retardation. (R. 19, Abst. 12.) For this reason he had been studied recurrently by social agencies, psychologists and psychiatrists from early childhood up to the time of his arrest, confession and trial. (R. 19, 21, Abst. 12, 13.)

His father was reported to be an intelligent, stable individual whose primary concern was the welfare of his children. (R. 22, Abst. 14.) A cook, who had been steadily employed in a department store in Chicago for 15 years, the father had been incapacitated by an accident in 1932, and from 1933 until the time of petitioner's trial in 1936, the father and the three children were reduced to living on relief. (R. 21, Abst. 13, 14.)

Petitioner's mother had deserted the family when petitioner was two years old (R. 20, 21, Abst. 13, 14) and he had not seen her since he was eight years old. (R. 15, Abst. 8, 9.) When the mother had deserted them in 1919, the children had as dependents become wards of the Juvenile Court of Chicago (R. 19, Abst. 12, 13) and had for a while

been placed in an orphanage. (R. 21, Abst. 13, 14.) Later the older sister had acted as housekeeper for the family. Even during the depression their home was reported to have always been clean and well cared for. (R. 21, 22, Abst. 13, 14.)

Emil Reck was born in Chicago in 1917. He weighed 13½ lbs. at birth. (R. 25, Abst. 16.) He had not only the usual childhood illnesses, but at the age of two was afflicted with pneumonia and influenza complicated by boils and lumps all over his body, which necessitated his hospitalization in the County Hospital for three months. (R. 25, Abst. 16.) He did not walk or talk until after he recovered from this affliction when he was two and one-half years old. (*idem.*)

He started school at the age of 6. At 8 he was still in the first grade. (R. 26, Abst. 17.) Because of this school retardation he was referred to the Institute for Juvenile Research in Chicago—for the first time—in 1925. There it was found that although he had a chronological age of 8½ years, his mental age was only 6 years. (R. 31, Abst. 22.) His I. Q. was ascertained to be 70 and he was diagnosed as a border-line mental defective. (R. 19, Abst. 12, 13.)

At the age of 9 he was hit by a motorcycle (R. 16, Abst. 9, 10), knocked unconscious and his nose was almost cut off. (R. 30, Abst. 21.) He was operated upon for this twice and still retains scars. (R. 20, Abst. 13.) As a result of this injury he has had difficulty breathing ever since (R. 20, Abst. 13); his eyesight was also affected. (R. 30, Abst. 21.) The occasional remarks of police as to the "ex-pugilist" profile of petitioner, that are to be found in the record (*e.g.* R. 403, Abst. 128) are traceable back to this accident of childhood.

At the age of 12½ years petitioner was in 1929 again

referred to the Institute for Juvenile Research because of continuing retardation in school. This time his mental age was found to be 8 years (R. 31, Abst. 13), his I. Q. was rated at 64 and he was classified as a high grade mental defective. (R. 19, Abst. 12, 13.) Institutionalization was recommended. (*idem.*) The I. J. R. psychiatrist who examined him reported that Reck maintained a staring expression throughout the interview, the only change being a twisting of his mouth at one side; that answers had to be squeezed out of him; that he remained silent a long time and questions had to be repeated in order to make him answer, which was often done merely by shaking his head or shrugging his shoulders. Reck was described as inert, lacking in initiative and over-sensitive, tears coming to his eyes when his backwardness in school was discussed. (R. 28, Abst. 19.)

Accordingly Reck was placed in The Oaks for almost a year in 1930-31. (R. 26, Abst. 17.) That school reported that at a time when he was 14 years old he did 4th and 5th grade work, spent most of his time in manual training, and was resistive to group games, preferring to stand around and watch the other children, but that he was no behavior problem there, did not get into fights and was seldom in trouble. (R. 27, Abst. 18.) In 1932 Reck ceased to be a patient at The Oaks because the age limit at that institution was reduced. (*idem.*)

Thereupon, when petitioner was 14 years, 8 months old, he was again examined at the Institute for Juvenile Research, which at that time found his mental age to be 8 years and 4 months and his I. Q. 57. (R. 27, Abst. 18.) Commitment to an institution for the feebleminded was recommended. (*idem.*)

But the commission at the Juvenile Court was opposed to his commitment for feeblemindedness. (R. 27, Abst. 18.)

The Juvenile Court ordered his placement for prevocational training. (R. 19, Abst. 12, 13.)

In 1932, when Emil Reck was 15 years old, the Bureau of Child Study of the Board of Education of the City of Chicago requested the Institute for Juvenile Research to make still another examination of him. This time he was found to have an I. Q. of 57 and a mental age of 8 years 10 months. (R. 27, Abst. 18.)

Reck dropped out of school when he reached the age of 16 years. At that time he was in the 7th grade in public school. (R. 15, Abst. 8, 9.) He was never expelled from school. (*idem.*)

In 1933 the juvenile probation officer asked for a dismissal of the feebleminded petition (R. 28, Abst. 19), but whether the petition was dismissed is unknown. (*idem.*)

The work record of petitioner was that of an unskilled adolescent during the worst of the depression. He had spent almost a year in the C. C. C. and the P. W. A. and had worked for a milkman one week, but had no other jobs. (R. 15, 16, Abst. 8, 9.)

Aside from his retardation, petitioner was never a behavior problem, either in school or at home. (R. 19, Abst. 12, 13.) He had no peculiarities of conduct, mood, speech or appearance. (R. 14, Abst. 8.) He did not get into fights. (R. 27, Abst. 18.) But he was withdrawn, apathetic, reticent, gave the "impression of general retardation", was very quiet (R. 19, Abst. 12, 13; R. 28, Abst. 19) and neat. (R. 19, Abst. 12, 13.) His chief interest was in sports. (R. 29, Abst. 20.) He never remained away from home over night and seldom stayed out late. (*idem.*)

Shortly before his trial in 1936, when he was 19 years old, he was examined at the Behavior Clinic of the Criminal Court of Cook County. In that examination he was unable to state the result of dividing 25 by 5, and did not

know how many weeks there are in a year, how many feet in a yard, how many quarts in a gallon, when Columbus discovered America, who fought in the Civil War, and the capitals of Illinois, England, France and Germany. (R. 17, Abst. 10, 11.)

Dr. Harry R. Hoffman, Director of the Behavior Clinic, found him to have no nervous or mental disorder, and that he was not committable as insane or feebleminded, but "of dull normal intelligence". (R. 18, Abst. 11, 12.) It was on the basis of Dr. Hoffman's testimony that a special jury, impaneled before the murder trial under a special petition of the Public Defender as a "friend of the court" (R. 33, 34, Abst. 23, 24), found petitioner not committably feebleminded (R. 35, Abst. 24) and therefore able to stand trial on the charge of murder.

5. The Illness and Hospitalization of Petitioner During His Illegal Detention.

It is undenied that during his week long detention without charge [in violation of Section 660 of the Illinois Criminal Code (Ill. Rev. Stat., ch. 38, § 660) requiring that persons arrested without a warrant be taken before an examining magistrate "without unnecessary delay"], and shortly before his confession, petitioner was taken ill, fainted several times, vomited blood on the floor of the police station and was twice taken to the hospital on a stretcher. All of these facts are established by the testimony of the State's witnesses.

Court Reporter Isaacson, who took down in shorthand the first written confession—the joint confession—on Saturday, March 28 (R. 1032, Abst. 274), testified that at the time he made this confession, Reck was sick, walked weakly and that his face was ashen. (R. 162, Abst. 56, 57.)

Court Reporter Harvey, who took down in shorthand

the second written confession—the individual confession—of Reck on Sunday, March 29 (R. 551, 552, Abst. 160; R. 983, Abst. 250) testified that when he did so he knew that Reck had been sick. (R. 573, Abst. 166.)

Police Officer Youhn testified that he was alongside Reck when he vomited on Friday evening at about 9:30 p.m. (R. 202, Abst. 80), and that he laid Reck out on a bench after he vomited. (R. 203, Abst. 81.)

Sergeant of Detectives Aitken testified that when he accused Reck of being a participant in the murder of Dr. Peacock "Reck was bleeding from the mouth in short gushes of blood". (R. 405, Abst. 128.)

Police Officer Reilly testified that Reck "was taken to the hospital at 9:35 because he had a vomiting spell. Yes, in the North Avenue Station." (R. 180, Abst. 66.) Reilly further said he "thought it was blood I saw Emil Reck vomit. A dark substance on the floor after he had vomited * * *. I thought it was blood I saw on the floor". (R. 180, 181, Abst. 66, 67.)

Captain of Police O'Connell testified he saw the vomit of Reck being cleaned up and was told by some of the police officers there that it was blood. (R. 183, Abst. 69.)

Dr. R. L. Abraham, a neighborhood physician, who was in the North Avenue Police Station on Friday evening when Reck was taken to the hospital the second time (R. 186, Abst. 71) and who testified as a witness for the State (R. 184, Abst. 69, 70), stated that he saw blood on the floor of the North Avenue Station, that it was a bright red, that the area of blood on the floor was about one foot square, that he asked a police officer how the blood got on the floor, that the police officer pointed to Reck and said he had vomited blood, and that he had seen Reck lying on a bench and at another time on a stretcher. (R. 184, Abst. 69.)

Assistant State's Attorney Varnes testified that he saw blood on the floor of the North Avenue Station between 9:30 and 10 o'clock p. m. Friday night and was told that Emil Reck was sick and had vomited. (R. 189, Abst. 72.)

Assistant State's Attorney Kearney testified that he discussed the causes of Reck's vomiting blood with Sergeant of Detectives Aitken. (R. 357, Abst. 115.)

That Reck was taken to the County Hospital on Friday, March 27, was testified to by Captain of Police O'Connell (R. 182, Abst. 68), Police Officer Reilly (R. 179-181, Abst. 66, 67), Police Officer Kula (R. 182, Abst. 67), Captain Aitken (R. 416, Abst. 131) and Assistant State's Attorney Varnes. (R. 426, Abst. 134.) Captain O'Connell, in charge of the North Avenue Station, testified that he ordered that Reck be sent to the hospital. (R. 941, Abst. 231.) O'Connell, Reilly, Varnes and Dr. Abraham all stated that Reck was taken to the hospital on a stretcher. O'Connell mentioned that he was twice sent there on a stretcher.

Three medical witnesses for the prosecution—Dr. Wilkey (R. 183, Abst. 69), Dr. Day (R. 190, Abst. 73) and Dr. Scatliff (R. 191, Abst. 73, 74; R. 362, Abst. 117)—all testified to seeing Emil Reck as a patient in the County Hospital.

Captain O'Connell testified that he called for Reck at the County Hospital on Saturday morning, March 28, and that Reck was taken from the second floor in a wheelchair. (R. 183, Abst. 69.)

At the hearing on the admissibility of the confessions, held outside the presence of the murder trial jury, Reck testified that he became sick on Thursday, March 26; that he was sick in the morning and got more sick all the time; that he was in this condition at the North Avenue Station 5 or 6 hours before he was taken to the County Hospital the first time; that he was taken to the hospital

in a patrol wagon because he was in such pain; that when they brought him back to the police station after his first trip to the hospital he fainted in the station; that all of a sudden blood came out of his mouth; that someone said, "Take him to the hospital — let him go with the blood like that and he will die"; that it must have been a doctor who said that "because nobody else but a doctor would know"; that a lot of blood came out of him; that it all came out of his mouth; that just before the blood came out of his mouth, he fainted; that he fainted again; that he fainted about seven times in all; that after he left the hospital in a wheelchair, he was taken back to the police station and then, he thought but was not sure, to the Criminal Court Building; that he was in pain all this time; that he was still sick on Saturday, that at first on that day he could barely walk because his legs were so numb, but that a couple of hours after he left the hospital he was able to stand on them; that even then he was in pain when he walked; that the pain was on his left side, but that he suffered all over his body. (R. 125-134, Abst. 46-49.)

The Behavior Clinic report, dated April 13, 1936 (R. 18, Abst. 11) states that Reck "was also treated for 'kidney trouble' at Northwestern University clinic last week (no report yet)." (R. 30, Abst. 21.)

At the post-conviction hearing Reck testified that the pain he suffered on Friday, March 27, 1936, was continuous and was located in the left abdomen, that he continued to suffer pain thereafter, and that in 1937 he underwent an operation at the Menard Penitentiary for a double hernia, that he had felt pain in connection with the double hernia prior to the operation, that the pain was located in the left side through the middle part of his stomach, that this later pain was located in the same place as the pain he suffered on March 27, 1936, and that he had had no

other injuries and was involved in no accident of any kind between that date and the time of his operation. (R. 281-283, Abst. 92.)

6. Beatings and Physical Mistreatment of Petitioner by Police.

That Emil Reck, during his prolonged illegal detention by the police, was ill, fainted, vomited blood and was hospitalized is undisputed. There is sharp disagreement between the parties as to the causality of these undisputed facts. Such disagreement is almost conventional in cases of this character.

It is the contention of petitioner that he was severely beaten by the police on the Wednesday, Thursday and Friday preceding his confession on Saturday and that he was physically mistreated on Saturday; that his illness and hospitalization resulted from these beatings; and that his confession to the murder of Dr. Peacock was coerced by means of these beatings. The confession, petitioner states, was motivated both by the hope that, if he confessed to this crime he did not commit, he would receive treatment for his painful injuries, as the police promised him, and by the fear of further, even more severe beatings, which, because of his hemorrhaging, he feared would prove fatal.

The report of the Behavior Clinic of the Criminal Court of Cook County, filed on April 13, 1936 (R. 14, Abst. 8) states:

> "When patient was being questioned by the police, following the arrest of the boys in the present offense, he is said to have fallen on the floor with a stomach hemorrhage. He was taken to the County Hospital, where no diagnosis was made because of limited time, as he was whisked away almost immediately to Bridewell. The physician who attended him there thought he might be suffering from an exasurba-

> tion of a stomach ulcer. However, patient denied any previous symptoms of ulcer and claimed that he had been severely beaten by the police in order to extract a confession from him." (R. 30, 31, Abst. 22.)

Dr. Felsher, one of the internes on duty in the ward of the County Hospital where Reck obtained temporary haven, testified that Reck told him that he had been hit in the stomach by the police. (R. 172, Abst. 61, 62.)

Dr. Weissman, the interne who recorded Reck's case history on the hospital chart (R. 169, Abst. 60), testified with obvious reluctance that Reck told him he had been in a "scuffle" (admittedly Dr. Weissman's term, not Reck's) with the police during the three days he had been in custody and that they had hurt him. (*Idem.*)

Both of these declarations by Reck to the internes that he had been beaten by the police were made by him before he made the confession on the following Saturday afternoon. (R. 137, Abst. 49; R. 1032, Abst. 274.)

Specifically, according to Reck's testimony, he was manhandled by the police almost immediately after being taken into custody on Wednesday, March 25, 1936. Reck testified that within 10 minutes after he arrived at the police station, Officer Reilly struck him on the chin a couple of times. (R. 55-57, Abst. 31, 32.) Then, after Officer Susenbeck, at about 12:30 p. m., warned him, "You better tell me everything by two o'clock," Reck testified, he was transported to another police station and left to himself and his own thoughts until that time. (R. 62-64, Abst. 32, 33.)

At two o'clock in the afternoon, Reck was brought back to the first police station and then Officers Susenbeck and Kula, he stated, questioned him, emphasizing their interrogations by hitting him twice on the jaw and 4 or 5 times in the stomach. (R. 67-70, Abst. 33, 34.) Susenbeck and

Reilly each weighed 190 or 195 lbs., whereas Reck weighed 148. (R. 71, Abst. 34.)

At about 2:30 p. m., Reck stated, Officer Reilly hit him on his feet, back, chest and stomach 5 or 6 times with a blackjack about 10 inches long. (R. 72-75, Abst. 34, 35.) Thereupon the police officers handcuffed Reck to a chair and left him in a room by himself for about an hour. (R. 76, 77, Abst. 35.)

At 3:30 p. m., the questioning was resumed and Reck was confronted with Nash, who had confessed to some robberies, implicating Reck. When Reck continued to deny guilt, the other boys were led out and, according to Reck's testimony, Captain O'Connell and Officers Reilly and Susenbeck handcuffed his wrists and hung him on a door, with the handcuff between his hands over the top of the door, his body directly against the edge of the door and his feet just off the ground. (R. 80-84, Abst. 36.) He was left on the door about 2 minutes. (R. 85, Abst. 37.) When he was taken down, Reck could not stand on his feet and dropped to the floor. (R. 86, Abst. 37.)

The police officers thereupon picked him up, he stated, and Officer Kula hit him in the stomach. (R. 86, Abst. 37.) Reck dropped to the floor again, and the police officers picked him up again. They held him up, he testified and Officer Susenbeck hit him in the stomach. (R. 87, Abst. 37.) Reck's hands were then still handcuffed. (*Idem.*)

Officers Reilly and Susenbeck then hit him so many times, he testified, that he said "Yes" to some robbery he did not know about. (R. 88, Abst. 37.) These beatings took place between 3:30 and 5 o'clock in the afternoon. (R. 89, 90, Abst. 38.) During this hour and a half Officer Reilly hit Reck about 20 times (R. 92, Abst. 38) and Officer Susenbeck hit him 20 or 25 times (R. 93, Abst. 38), according to Reck's testimony. Officer Kula also hit him in the chest

and in the stomach, how many times Reck could not say. (R. 93, Abst. 38.)

At 5:30 p. m. they took him into another room, where Nash was dictating a confession of some robberies. When Reck denied being with him, Officer Susenbeck hit him with his fist in the back of the neck about a dozen times. (R. 98, Abst. 39, 40.) After that Reck was loaded into a patrol wagon and taken to another police station for the night.

On the morning of Thursday, March 26, upon arrival at the North Avenue Police Station Reck stumbled and fell on the way upstairs. Reck, believing the police were going to beat him some more, did not move when Officer Susenbeck commanded him to get up, and for this Reck got a kick from Susenbeck. (R. 104, Abst. 41.) Reck was then taken into a room by himself, handcuffed to a chair and left there alone for an hour. (R. 109, Abst. 41.) Finally Captain O'Connell came in, questioned Reck and, when he continued to deny having part, O'Connell bounced his head against the wall. Reck testified that O'Connell "kept bouncing me and bouncing me." (R. 111, Abst. 42.)

At length, Nash and Goethe, who were being questioned simultaneously, told police Reck had a gun they had used. Reck denied this, too, and Captain O'Connell, with Officers Reilly and Susenbeck, hung Reck on a door again. (R. 111, Abst. 42.) To get down from the door, "because I was in awful pain," Reck testified, he told the police he had the gun "buried back of a Chink at California and Division." (R. 112, Abst. 42.) The police took Reck down from the door and immediately drove him out to "the Chink's place." When the police found no gun there, and Reck then told him he never had a gun, he was immediately taken back to the North Avenue Station and hung

on the door again, this time for 2½, 3 minutes or perhaps more, Reck testified. (R. 113, 114, Abst. 43.)

It was on the morning of Thursday, March 26, that Reck first became ill. (R. 121, Abst. 44.) He testified, "I was sick in the morning, and then they kept hitting me, and I got sick more all the time." (*Idem.*) The latter part of Thursday became a blur in Reck's mind. "I could not remember what I done on Thursday, I was too sick." (R. 117, Abst. 44.)

Friday, March 27, was the day Reck was taken to the hospital. During the afternoon Reck was questioned by the police for five or six hours and, when he continued to deny participation in robberies Nash and Goethe implicated him in, the police, Reck stated, continued hitting him. (R. 123, 124, Abst. 45, 46.) Finally Reck fainted. (R. 124, Abst. 46.) He was then taken to the hospital (*idem.*), but the interne in the examining room at the hospital did not deem him at that time a hospital case. (R. 184, Abst. 69.)

When Reck was brought back to the North Avenue Police Station from the hospital, the police started beating him again. (R. 124, Abst. 46.) Reck testified that he was so sick Friday night that he could not tell who was beating him. (*Idem.*)

Suddenly blood came out of his mouth, he fainted several times, and shortly after 10 p. m. on Friday he was taken back to the County Hospital. This time the same examining interne sent him up to a ward, where he remained for the night, as has already been set forth.

Reck was hung on the door, according to his testimony, 4 or 5 times in all, for a period of 2 to 4 minutes each time. (R. 126, Abst. 46.)

Late on Saturday morning, March 28, Reck was brought back from the hospital to the North Avenue Police Sta-

tion by Captain O'Connell himself. (R. 183, Abst. 69.) Reck left the hospital in a wheel chair and was not able to walk for about two hours after that. (R. 130-133, Abst. 48.) He was kept at the North Avenue Police Station for 4 hours. (R. 131, Abst. 48.) In the presence of Officers Susenbeck and Burns, Captain O'Connell interrogated him about a gun during this time and, upon Reck's disclaiming knowledge of it, O'Connell beat Reck's head against the wall. (R. 132, Abst. 48.)

In mid-afternoon on Saturday, Reck was taken to the State's Attorney's Office. Captain O'Connell and Officer Reilly were there as well as several prosecutors. No one beat Reck at the State's Attorney's Office, but O'Connell, he testified, threatened him there, saying, "If you don't come along like Jimmie and Robert, you are going to come back with me to North Avenue." (R. 134, 135, Abst. 49.) Reck was also asked if he "was waiting to be with them fellows who hit Jimmie and Robert and Whitie." (R. 128, Abst. 47.)

It was at this point that Reck agreed to confess to the murder of Dr. Peacock. Reck testified that Officer Reilly, in the presence of Assistant State's Attorneys Crowley and Kearney, said they would give him treatments if he said he was there; that he said "yes", that he was there, although he was not; and that he said that because he wanted the treatments, that he was in pain. (R. 129, 130, Abst. 47, 48.) Reck also stated that after he signed the confessions he did not receive the promised treatment and was not taken back to the hospital.

At about six o'clock on Saturday evening Reck and the three other boys were led into another room, where Assistant State's Attorney Crowley, in the presence of prosecutors Kearney and Varnes, asked him a number of questions about the Peacock murder. (R. 135-137, Abst. 49.)

10 or 15 minutes before that Captain O'Connell had told him, he testified: "You better do what the rest of them are doing or you will get some more." (R. 141, Abst. 50, 51.)

When the confessions were signed on Sunday evening Reck was too sick to read the document, although he stated he understood what was read to him. (R. 138, Abst. 48, 50.) Captain O'Connell was in the room, as well as some other policemen; but O'Connell and Crowley were the only ones present Reck remembered. (R. 138, 139, Abst. 50.)

That Reck was beaten to extract a confession from him was corroborated by Livingston, Goethe and Nash.

Livingston testified that he saw Officer Susenbeck strike Reck about 5 or 10 minutes after they were first brought to the station on Wednesday, and that he (Livingston) was only 5 or 6 feet away when this happened. (R. 825, Abst. 201.)

Goethe testified that on Wednesday, March 25, he saw police officers lead Reck into the back room at the North Avenue Station, that he heard Reck screaming and hollering in the back room, "Please don't do it," that Reck hollered for about five minutes, that Officers Kula and Susenbeck were with Reck at this time, that after the first five minutes there was silence, that then Reck hollered again a second time for a few minutes, that Officers Kula and Susenbeck then brought Reck back into the room where Goethe was, and that Reck looked like he had been crying. (R. 865-870, Abst. 211, 212.) Goethe further testified that on Friday or Saturday he saw blood coming out of the mouth of Reck. (R. 878, Abst. 213.) Nash testified that he was present on Wednesday, March 25, 1936, in the North Avenue Police Station with Goethe when Reck was taken into a back room by the police, that they shut the door and he could not see what they were doing, but that he could

hear Reck holler, "Don't don't, don't" in a loud tone of voice for 10 or 15 minutes, that he heard a sound like someone being slapped in the face quite a few times, that after that he heard Reck moaning for about 5 minutes, the door was opened and he saw that Reck had passed out, that Reck had thrown up and that one of the police officers had taken Reck to the bathroom, where Reck had "passed out." (R. 887-890, Abst. 215, 216.)

Nash further testified that on the same Wednesday, at about two o'clock, he was sitting with Reck when Officer Susenbeck, whom Nash stated he had known for many years and who had once been Nash's mother's fiance, came up and "was talking nice to Emil" when he grabbed ahold of Reck's hair and banged his head up against the wall three or four times, and that just before Officer Susenbeck bounced Reck's head against the wall, he told him, "Don't worry, everything will be all right." (R. 890-892, Abst. 216, 217.)

The witnesses for respondent denied categorically that Reck was subjected to violence in the process leading to his confession.

Officer Bernard Reilly denied that he struck, threatened or promised immunity to Reck, or that anyone did so in his presence. (R. 290-292, Abst. 94.) He also denied that Reck was hung on a door, hit with a blackjack, and that he had told Reck that he had better go along with the boys who were signing a statement, etc. (R. 905-908, Abst. 220, 221.)

Officer Stanley Kula also expressly denied striking Reck in the jaw, in the stomach, hitting him with a blackjack, banging his head against the wall, hanging him on a door, etc. (R. 921-923, Abst. 225, 226.)

Officer Fred Susenbeck likewise testified he did not strike or beat Reck, hang him on a door, kick him in the stomach,

grab him by the hair and bounce his head against the wall, etc., etc. (R. 927-931, Abst. 227, 228.)

Captain Harry O'Connell made similar blanket denials. (R. 932-934, Abst. 228, 229; R. 942, Abst. 232.) So did Sergeant of Detectives Aitken (R. 407, Abst. 129), Assistant State's Attorney Kearney (R. 337, Abst. 109) and Assistant State's Attorney Varnes. (R. 188, Abst. 72; R. 423, 424, Abst. 133-134.)

These repetitious disavowals by the State's witnesses of the use of any violence whatsoever against Reck, or even the threat of it, were uniformly made in response to stock leading questions, over the repeated objections of petitioner's attorneys and despite even the occasional warning of the trial court. (For example, see State's Attorney Boyle's leading questions at R. 290, 291, 292, 305, 306, 310, 311, 317, 320, Abst. 94, 95, 97, 99, 101, 102.)

With unexpected frankness Officer Youhn expressed what obviously seemed to be the real thinking of these official witnesses. When he was asked on cross-examination what he would have done, if Reck had complained to him about being beaten, Youhn replied, "What could I have done about it?" (R. 202, Abst. 80.)

7. Medical Testimony.

Dr. Leonard Weissman, an interne on duty in Ward 35 of the County Hospital in Chicago at the time that Reck was hospitalized in that ward (R. 714, Abst. 716), was called to the stand by the defense. (R. 163, Abst. 57.) He testified that, according to the hospital record, Reck was brought to that ward at 10:30 p.m., Friday, March 27, 1936, and remained there until about 10 o'clock the following morning. (R. 164, Abst. 57.) Dr. Weissman stated that he was photographed with Reck in the hospital between 11

and 12 o'clock that night, and that the photograph had appeared in the newspapers. (R. 167, Abst. 59.)

The hospital record in the case of Emil Reck was made almost entirely by Dr. Weissman, was in his handwriting and consisted of 13 sheets of records, according to Dr. Weissman's testimony. (R. 715, Abst. 176; R. 746, Abst. 182.) Upon the reiterated request of defense counsel (R. 170, 176, Abst. 60, 63, 64; R. 729, Abst. 180), Dr. Weissman brought this hospital record of Emil Reck to court. (R. 176, Abst. 63-64.) The motion of defendant to introduce this hospital record in evidence was overruled (R. 747, Abst. 182, 183), but the court permitted the witness to use this record to refresh his recollection. (*Idem.*)

There were a few incrustations of blood about Reck's mouth, the witness stated, apparently "old blood, dark colored" (R. 165, Abst. 58), but there were no lacerations about his mouth, throat or tongue. (R. 168, Abst. 59, 60.)

When Dr. Weissman first asked Reck in a general way how sick he was, Reck said, according to the Doctor, that he didn't want to talk, that he wanted to be left alone. (R. 169, Abst. 60.) When Reck was asked if he had any pain, he said it hurt on his left side (*idem.*) and that he had pains in the belly (R. 166, Abst. 58, 59); he also said he had had some bleeding. (R. 169, Abst. 60.)

Reck received morphine-atrophine with ipacec as a hypodermic at 10:55 p.m. Friday, about 45 minutes after entrance to the hospital (R. 716, Abst. 176) and again at 2:45 a.m. Saturday. (R. 165, Abst. 58; R. 716, Abst. 176.) Dr. Weissman also found "in the abdomen there was a vague tenderness on deep palpation in the left side, in the left masogastrium." (R. 166, Abst. 58, 59.)

A laboratory examination of Reck's stool, not voided, but obtained by rectal glove, was made for benzadrine reaction, Dr. Weissman stated. (R. 166, 167, Abst. 58, 59.)

This study was carried out on Saturday morning, March 28, sometime between 8 and 10, about 10 or 11 hours after Reck was admitted. (R. 720, 721, Abst. 177.) The color of the stool was normal, but the benzadrine reaction showed two plus chemical blood. (R. 166, Abst. 58, 59.)

"A complete history" was taken from Emil Reck by Dr. Weissman on Saturday morning, March 28. (R. 169, Abst. 60.) Dr. Weissman testified: "At that time he said he had been in a scuffle with the police several times during the three days he had been in custody, and that they had hurt him". The witness said he had thus stated the matter in the hospital record of the case, admitting that the term "scuffle" used in the record was the doctor's own. The witness was unable or unwilling to state the language Reck used in telling him this. (R. 729, 730, Abst. 180.)

Dr. Weissman found no evidence of Reck having swallowed a razor blade—a theory propounded by a newspaper the following day. (R. 168, Abst. 59, 60.)

Dr. Zachary Felsher, another interne on duty in Ward 35 of the Cook County Hospital during the night Emil Reck spent there, also testified. (R. 170, Abst. 61.) On being admitted to the ward, Reck had told Dr. Felsher that he had vomited blood and this had been corroborated by a police officer. (R. 171, 172, Abst. 61.) Dr. Felsher also testified that Reck had told him at this time that he had been hit in the stomach by the police. (R. 172, Abst. 61, 62.)

That a blow to the stomach of sufficient force could cause a hemorrhage Dr. Felsher stated to be his opinion based on medical certainty. (R. 172, 173, Abst. 61, 62.) Dr. Felsher also testified that if Reck were struck 20 times or so in the stomach, there should be discoloration, but that "in some cases where there is just no severe injury to the abdominal wall, with internal injury you will usually find there is no external signs". (R. 174, 175, Abst. 62, 63.)

Dr. Felsher also testified that Reck had at no time told him he had swallowed a razor blade. (R. 172, Abst. 62.)

Dr. J. Lester Wilkey, an interne who viewed Reck in the Examining Room at the County Hospital and who appeared as a witness for the prosecution (R. 183, Abst. 69), testified that he admitted Reck to a medical ward in the hospital because he was informed by the police that Reck had vomited blood. (R. 184, Abst. 69.)

Dr. Karl Sandburg testified as a medical expert at the request of the defendant. (R. 195, Abst. 75.) He stated that his opinion, based on medical certainty, was that in a hypothetical situation there could be a connection between beatings such as Reck had testified he had received from the police and the hemorrhages, vomiting and fainting spells which admittedly had occurred and resulted in his hospitalization. (R. 195-198, Abst. 76-78.) Dr. Sandburg further testified that it does not necessarily follow that such blows to the abdomen will leave a mark or marks on the skin or outer surface of the abdominal wall; and that in his experience he had observed such injuries. (R. 198, 199, Abst. 78.)

Two members of a committee of physicians that had interested itself in the solving of the *Peacock* case—Dr. L. Day (R. 190, Abst. 73) and Dr. H. Kenneth Scatliff (R. 191, Abst. 74)—who had visited Reck briefly while he was lying in the County Hospital, testified on behalf of the prosecution. These men had been telephoned by Assistant State's Attorney Kearney at about 11 p.m. Friday, March 27, and had been asked by him to go over to the County Hospital and look at Reck. (R. 342, Abst. 110.) Kearney testified that he asked these physicians to see if the accused "had any marks of brutality or anything on them". (R. 345, Abst. 111.) This was in line with Kearney's admitted plan to fortify the State's case against the possi-

bility of a defense contention that the confessions were obtained by duress. (R. 354, Abst. 113, 114.)

The testimony of Dr. Scatliff was crucial. In the murder trial, the court admitted the confessions into evidence after it had heard his testimony. (R. 192, Abst. 74, 75.) *In the post-conviction proceeding, the oral opinion of the court dismissing the petition relied most heavily upon the testimony of Dr. Scatliff, who took the stand in the post-conviction proceedings as well as in the original murder trial. The post-conviction court accepted Dr. Scatliff's testimony not only completely and at its face value, but considered it under what might well be termed more than its most favorable aspect.* (R. 490-492, Abst. 143.)

Dr. Day testified that he and Dr. Scatliff arrived at the bedside of Reck in the County Hospital at 2 a.m. on Saturday, March 28, 1936. (R. 968, Abst. 243.) They found Reck asleep. Dr. Day testified that they did not strip Reck when they examined him, that they did not take his sleeping apparel off; that Reck was lying in bed with a cover over him and that they pulled the cover off and saw him with a flashlight, and looked at his face, neck and head; that Reck was asleep; that their "examination" probably took one or two minutes. Dr. Day admitted that they did not examine his abdomen, nor his back, nor any part of his torso; that although they examined his arms, they did not examine his legs. (R. 969, Abst. 243, 244.) Dr. Day also admitted that they did not ask Reck any questions and that they did not examine the hospital chart with respect to Reck's condition. Dr. Day expressly admitted that from their examination they could not determine whether Reck had been struck a blow or series of blows in the abdomen. Dr. Day stated that he had heard that Reck had a hemorrhage, but could not say who told him. (R. 970, Abst. 244.) Dr. Day admitted that it was quite possible for Reck to have received internal injuries which could have caused

his illness, the evidence of which he could not see. (R. 972, Abst. 245.)

Dr. Scatliff, the companion of Dr. Day on this visit to the bedside of Emil Reck, contradicted Dr. Day. Whereas Dr. Day stated that their examination took only one or two minutes, Dr. Scatliff was positive it took fifteen minutes. (R. 975, Abst. 246.) Dr. Scatliff testified that he saw Reck in bed, that he was quite peaceful and seemed entirely normal; that Reck's pulse was regular and his color fair, "about what it is now"; that he could see his body down to his chest and that he saw no marks or bruises whatsoever, no abrasions of any kind; that he examined his wrists up to the forearm and saw no signs of discolorations or lacerations on his wrists; that Reck was asleep at that time (R. 974, Abst. 246); that they "looked him over pretty carefully"; that the room wasn't dark, but that to illuminate the patient still further the witness used his small pencil type flashlight (R. 975, Abst. 246); that Reck did not awaken during any of their examination, and that "It was not our object to disturb him." (R. 976, Abst. 246.)

Dr. Scatliff expressly admitted: "No, as a matter of fact I did not examine the abdomen of Emil Reck at any time." (R. 978, Abst. 247.)

Dr. Scatliff contradicted himself as well as Dr. Day. Testifying at the post-conviction hearing, Dr. Scatliff stated that during the examination Reck was not asleep throughout, as the Doctor had testified at the murder trial. Upon his second appearance on the witness stand, Dr. Scatliff testified that he and Dr. Day made a "visual examination" first, observing Reck lying quietly in bed apparently sleeping, "and then he roused and we spoke to him and asked him his name, if his name was Reck, he indicated that it was." However, the witness then immediately stated that when they asked him his name,

Reck "merely grunted", that when they asked him what the trouble was, they got no reply, and "that indicated to us he wasn't completely cooperative with us." (R. 365, Abst. 117.)

Admitting that they had not observed Reck's back, lower limbs or any part of his body below a level a little above the waist, Dr. Scatliff stated that they had not seen any bruises or discolorations on his chest or wrists. (R. 367, 368, Abst. 118, 119.) Dr. Scatliff testified that they asked Reck if he was in pain and that he said "No", that they asked him what the trouble was and he pointed with his hand to the epigastrial (R. 366, 367, Abst. 118, 119); and that they felt Reck's stomach and that he did not say anything when they did so. (R. 368, 369, Abst. 119.)

On cross-examination Dr. Scatliff admitted that he had been told that Reck had hemorrhaged, that to find out why was the reason for their visit to the hospital, but that he did not know to what to ascribe the hemorrhaging. (R. 375, Abst. 121.) Dr. Scatliff also admitted that he and Dr. Day had not asked Reck to what he ascribed his bleeding (R. 379, Abst. 122), that they had not tested for hernia (R. 392, Abst. 126) and that they had not checked to determine whether Reck had a gastric ulcer (R. 389, 390, Abst. 125)—a theory advanced by Sergeant of Detectives Aitken (R. 404, 405, Abst. 128), the police officer in charge of the Peacock investigation. Dr. Scatliff also testified that he did not look at the hospital chart and did not know whether or not Reck had been given a narcotic. (R. 393, Abst. 126.)

Dr. Scatliff also rendered a hypothetical opinion for the State. Admitting that he had not examined Reck to determine whether or not he had a gastric ulcer, he further testified that, hypothetically, if a man had an active gastric ulcer and received a blow to the stomach, that would aggravate it, but whether it would cause a hemorrhage is problematical. (R. 389, 390, Abst. 125.)

This hypothetical testimony of Dr. Scatliff was by way of elucidation of the hearsay testimony brought into the record by Sergeant of Detectives Aitken, who stated that when Reck hemorrhaged from the mouth in his presence, Reck told him that he had developed ulcers in a C. C. C. camp (R. 405, Abst. 128), and that about that time he (Aitken) had had a conversation with an unnamed doctor, who told him that if Reck had ulcers, then "his stomach was evidently full of blood and the shock" (of being accused of murder) "brought the hemorrhage". (R. 405, 406, Abst. 128, 129.) Aitken did not explain how the stomach became full of blood.

At the post-conviction hearing Reck denied ever having had ulcers of the stomach in his life and ever having told Sergeant Aitken that he did. (R. 446, Abst. 140.) Although the State had then had Reck in its custody and absolute control for 17 years, it made no effort to introduce its medical records of Reck or any other evidence to refute Reck's statement that he had never suffered from ulcers.

Officer Reilly had his own explanation of Reck's vomiting blood, fainting and hospitalization. Reilly testified that when Reck was sent to the hospital for the first time, he asked him what the trouble was and Reck said, "I am a little constipated and I have not went for a couple of days." (R. 916, Abst. 224.)

8. Decisions Below.

a. In the Criminal Trial.

When the prosecution sought to introduce into evidence the incriminating statements signed by Reck, his counsel objected on the grounds that they were made under duress and involuntarily. (R. 551, Abst. 160.)

A preliminary hearing was thereupon held outside the

presence of the jury on May 6 and 7, 1936. (R. 551-981, Abst. 160-249.) (An abridged version of this transcript was prepared by the Clerk of the Criminal Court of Cook County, apparently under the supervision of the State's Attorneys' Office; this is to be found at R. 48-206, Abst. 30-82.)

At the conclusion of this hearing outside the presence of the jury, the trial court held the confessions "free and voluntary" and admitted them. (R. 980, Abst. 249.) (The oral opinion of the trial thus admitting the confessions is set out in the transcript of proceedings (R. 979, 980) and is produced in full in Appendix A of this petition.)

In the presence of the jury a further hearing on the voluntariness of the confessions was held on May 12 and 13, 1936. (R. 961, Abst. 249-250.) Witnesses who had not testified at the previous preliminary hearing testified at the hearing before the jury. (*idem.*) (Petitioner has been unable to procure a transcript of this part of the proceedings. (R. 224, Abst. 107; R. 454-458, Abst. 141.))*

The confessions were then read to the jury. (R. 981-982, Abst. 250.)

The jury returned a verdict of guilty of murder against Emil Reck and fixed his punishment at 199 years imprisonment in the penitentiary. (R. 221, Abst. 84.) Motion for a new trial was overruled. (R. 222, Abst. 84.) Judgment

* Through the years Reck had gathered together the transcript of the hearing outside the presence of the jury on the voluntariness of the confessions. (R. 329, Abst. 105, 106; R. 493, Abst. 144.) But he did not have a transcript of the testimony of the hearing in the presence of the jury, and he lacked the text of the confessions. A transcript of the confessions was finally supplied by the State. (R. 445, Abst. 140.) But a transcript of the hearing on the confession held in the presence of the jury was not made available to petitioner, despite an order of court instructing the State's Attorney to furnish it. (R. 334, Abst. 107.) The post-conviction trial court thereupon declined to enforce its own order. (R. 454-458, Abst. 141.)

was entered on May 29, 1936 in accordance with the verdict of the jury. (R. 222, 223, Abst. 84, 85.)

In 1945 Reck brought writ of error to the Supreme Court of Illinois on the common law record. The question of the voluntariness of the confession and the federal constitutional issues here urged were not raised, and could not have been raised, in the writ of error on the common law record. The judgment of conviction was affirmed, Mr. Justice Gunn dissenting. *The People* v. *Reck*, 392 Ill. 311, U. S. 64 N. E. 526 (1946). Certiorari was denied by this Court. *Reck, Petitioner* v. *State of Illinois*, 331 U. S. 855 (1947).

b. In Post-Conviction Proceedings.

In 1947 petitioner's petition for writ of habeas corpus to the Supreme Court of Illinois, No. 30102, was denied.

In 1948 his petition for a writ of habeas corpus in the United States District Court for the Northern District of Illinois was denied. *Emil Reck* v. *Ragen, Warden*, 48 C. 246.

This petition under the Illinois Post-Conviction Hearing Act was filed on May 29, 1952. (R. 3, Abst. 2.) Hearings were held from time to time between November 7, 1952 and May 1, 1953. (R. 235-497, Abst. 88-145.)

Transcripts of evidence heard in the preliminary hearing at the murder trial outside the presence of the jury—but not of the hearing in the presence of the jury, which was not available to petitioner—were introduced into evidence in the post-conviction proceedings as exhibits. (R. 261-267, Abst. 89.)

The post-conviction trial court on May 1, 1953 denied the prayer of the petition under the Illinois Post-Conviction Hearing Act, overruled petitioner's motion for a new trial and returned Reck to the penitentiary. (R. 488-493, Abst. 142-144.) The oral opinion of the post-conviction

trial court is set out in the transcript of proceedings (R. 488-492, Abst. 142-144) and is reproduced in full in Appendix B of this petition).

Petition for writ of error under the Illinois Post-Conviction Hearing Act was filed in the Supreme Court of Illinois on September 16, 1953. (R. 1077, Abst. 295.)

Leave to file the writ of error under the Post-Conviction Hearing Act was granted by the Supreme Court of Illinois on March 25, 1955. (R. 1116.)

The Supreme Court of Illinois affirmed the judgment of the post-conviction trial court on November 23, 1955. (R. 1125.) The judgment of affirmance is reproduced in full in Appendix D of this petition. This affirmance was accompanied by an opinion written by Mr. Justice Bristow. *People of the State of Illinois* v. *Emil Reck* (Docket No. 33630), 7 Ill. 2d 261 (advance sheets), 130 N. E. 2d 200 (advance sheets). This opinion is set out in the transcript of proceedings (R. 1121-1124) and is reproduced in full in Appendix C of this petition.

9. Manner of Raising and Preserving Federal Questions.

(a) In the murder trial, when the prosecution sought to introduce the confessions of petitioner into evidence, his counsel promptly by motion objected to the introduction into evidence of any confessions or statements by Emil Reck on the ground that they were involuntarily made and made under duress. (R. 551, Abst. 160.) His motion for a preliminary hearing on the voluntariness of the confession was allowed (*idem*) and such hearing was had outside the presence of the jury on May 6 and 7, 1936. (R. 551-981, Abst. 160-249.) At the conclusion of this hearing, petitioner's motion to exclude his confessions was denied by the trial judge (R. 979, 980, Abst. 248, 249) and the confessions were received in evidence and read to the

jury. (R. 981-983, Abst. 250.) Petitioner's exception was noted in the record. (R. 982, Abst. 250.)

(b) Again, in petitioner's motion for a new trial, filed in the murder trial, it is averred:

> "Trial, proceedings, instructions and verdict were without due process of law, in violation • • • of the 5th and 14th Amendments of the Constitution of the United States." (R. 39, 40, Abst. 24.)

This motion for a new trial was overruled on May 29, 1936. (R. 222, Abst. 84.)

(c) Again, in Reck's petition under the Illinois Post-Conviction Hearing Act, filed on May 29, 1952, it is averred:

> "That in the proceedings which resulted in petitioner's conviction there occurred substantial denials of his rights • • • under the Fourteenth Amendment of the Constitution of the United States, in that he was convicted as a result of a coerced confession, given during a period of illegal detention in excess of seven days after an unlawful arrest, and admitted into evidence over his objection."

(d) In Emil Reck's Petition for Writ of Error to the Supreme Court of Illinois under the Illinois Post-Conviction Hearing Act, filed on September 16, 1953, it is averred:

> "Your petitioner, Emil Reck, • • • prays that this Honorable Court issue its writ of error directed to the Criminal Court of Cook County to review the judgment of that Court against your petitioner on or about May 1, 1953, and all proceedings and questions presented by the cause therein entitled '*Emil Reck* v. *People of the State of Illinois,*' No. PC 255, wherein your petitioner sought an order vacating and setting aside the judgment and sentence entered in '*People of the State of Illinois* v. *Emil Reck,*' No. 36-0459, in which your petitioner was convicted of murder and sentenced to 199 years in the penitentiary, as a result

of a coerced confession obtained from your petitioner during a period of illegal detention following an illegal arrest, in violation of your petitioner's rights * * * under the Fourteenth Amendment to the Constitution of the United States." (R. 1077, 1078, Abst. 295.)

(e) In the Statement of Errors relied on for Reversal, contained in the brief filed in September, 1954 on behalf of petitioner in the Supreme Court of Illinois in his petition for Writ of Error under the Illinois Post-Conviction Hearing Act, it is stated (on page 43):

"4. The Court below erred in failing to read the voluminous exhibits introduced into evidence at the post-conviction proceedings and consisting of transcripts of testimony taken in the murder trial, outside the presence of the jury, in re the confessions of plaintiff-in-error being free and voluntary; by which error of the court below plaintiff-in-error was once again deprived of due process of law, in violation of rights guaranteed to him by the Fourteenth Amendment to the Constitution of the United States * * *"

REASONS FOR ALLOWANCE OF THE WRIT.

I.

THE SUPREME COURT OF ILLINOIS HAS HEREIN DECIDED A FEDERAL CONSTITUTIONAL QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

The opinion below proceeds by emphasizing the brutality of the crime committed and the internally coherent and plausible details of the confessions obtained. But the opinion, although it specifically recognized that "the basic contention of petitioner is that his conviction was predicated upon a confession obtained from him by coercion" (R. 1122), fails to address itself to a discussion of the voluminous evidence concerning the means by which and the circumstances in which the confessions were procured.

Instead, the opinion simply states that "there is an irreconcilable conflict in the two factual pictures as presented by the petitioner and the People," that "Two trial judges and one jury saw and heard the witnesses on both sides and reached the conclusion that petitioner's charge of coercion was without merit," and that "such finding will not be disturbed by a reviewing court unless manifestly against the weight of the evidence." (R. 1124.)

Thus, *the opinion below completely ignores the basic distinction drawn by petitioner, as expressly, clearly and emphatically in the court below as in this petition, between the disputed facts relating to the issue of physical coercion and the facts, admitted by the prosecution and indeed established by the testimony of the State's own witnesses, relating to the issue of mental coercion. It was upon these undisputed facts which, we submit, establish mental co-*

ercion as a matter of law, that petitioner primarily rested his case in the court below, as he does in this Court.

By this means the opinion below reaches the conclusion, "There is little in the record outside the testimony of petitioner and his confederates that the alleged confession was not voluntary" (R. 1124), a conclusion somewhat startling in an opinion which shows on its very face that:

(1) Petitioner at the time of the making of the confession was a mentally retarded lad of 19, "classified as a border line mental defective with an I. Q. of not more than 70" (R. 1122);

(2) The confession was made while "petitioner was in the custody of the police for a week" (R. 1123);

(3) "During that week no formal charge was placed against petitioner" (R. 1123);

(4) "During that week * * * he was confined practically *incommunicado*" (R. 1123); and

(5) "During that week * * * he was frequently ill, fainted several times, vomited blood on the floor of the police station and was twice taken to the hospital on a stretcher" (R. 1123).

It is respectfully submitted that this result—dictated perhaps unconsciously by local mores in the area of "practical" police methods—virtually amounts to a species of tacit nullification of the controlling decisions of this Court, accomplished by copious applications of *ignoratio elenchi.*

A. The Opinion of the Court Below Fails to Recognize That Confessions May Be Coerced by Purely Mental Means, Such as Incommunicado Detention and Prolonged Interrogation.

This Is Not in Accord With the Applicable Decisions of This Court, a Long Line of Which Hold That Mental Means May Be as Coercive as Physical, That Use of a Confession Based on Either of Them to Procure a Conviction Is Denial of Due Process and Is a Violation of the Accused's Rights Under the Fourteenth Amendment.

The opinion below fails to recognize or even mention any form of mental coercion except "promise of reward" (R. 1123), which has not been claimed in this case.

This is at variance with the whole doctrine of coerced confessions propounded by this Court. As recently as last month, on January 9, 1956, in *Commonwealth of Pennsylvania ex rel. Herman* v. *Claudy, Warden*, ... U. S. ....., 76 S. Ct. 223 (adv. sh.), this Court stated:

> "Our prior decisions have established that * * * a conviction following trial or a plea of guilty based on a confession extorted by * * * mental coercion is invalid under the Federal Due Process Clause." (224.)

In 1954, in *Leyra* v. *Denno*, 347 U. S. 556, this Court reiterated what it there termed "the settled view of this Court":

> "The use in a state criminal trial of a defendant's confession obtained by coercion—whether physical or mental—is forbidden by the Fourteenth Amendment."

In unmistakable terms this Court has thus indicated that the doctrine embodied in the long, classic line of cases beginning with *Brown* v. *Mississippi*, 297 U. S. 278, and running through *Chambers* v. *Florida*, 309 U. S. 227,

Lisenba v. *California*, 314 U. S. 219, *Ashcraft* v. *Tennessee*, 322 U. S. 143, *Malinski* v. *New York*, 324 U. S. 401, *Haley* v. *Ohio*, 332 U. S. 596, *Watts* v. *Indiana*, 338 U. S. 49, *Turner* v. *Pennsylvania*, 338 U. S. 62, *Harris* v. *South Carolina*, 338 U. S. 68, *Stroble* v. *California*, 343 U. S. 181, and *Stein* v. *New York*, 346 U. S. 156, is the law of the land.*

> "When a suspect speaks because he is overborne, it is immaterial whether he has been subjected to a physical or a mental ordeal." *Watts* v. *Indiana*, 338 U. S. 49, 53.

What is essential to the validity of a confession is that it be the product of a reasoned choice.

"The due process clause of the Fourteenth Amend-

---

* The basic considerations of public policy embodied in this strict rule reach even beyond protection of individuals against lawless law enforcement, precious as are their rights. It is rooted in the repugnance of a coerced confession to our basic standards of justice. "Declarations procured by torture are not premises from which a civilized forum will infer guilt." *Lyons* v. *Oklahoma*, 322 U. S. 596, 605.

In consequence it is immaterial what other evidence of guilt there may be. If the judicial process has been vitiated by the use of a coerced confession, "the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict." *Malinski* v. *New York*, 324 U. S. 401, 404.

Nevertheless, we do believe this Court is interested in knowing that counsel for petitioner in the post-conviction hearing (R. 441, Abst. 138) and his present counsel on this petition for *certiorari*, who also represented him before the Supreme Court of Illinois, are informed that there was in fact no evidence against petitioner in the murder trial except his confession and the confessions of three other teen-age boys, obtained in the same circumstances and by the same processes as was his. This statement is made in the absence of a complete transcript of the murder trial. Counsel for petitioner sought in the post-conviction hearing to ascertain if there were any eye-witnesses to the crime alleged, but the State objected to this question and the objection was sustained. (R. 359, Abst. 116.) Petitioner pleaded not guilty as soon as he was first brought before a magistrate (R. 13, Abst. 8; R. 280, Abst. 92) and has, throughout the 20 years since then, steadfastly maintained that he is innocent of the killing of Dr. Peacock.

> ment invalidates a state court conviction grounded in whole or in part upon a confession which is the product of other than a reasoned and voluntary choice." *Lee* v. *Mississippi*, 332 U. S. 742, 744, 745.

Coercion is essentially coercion of the mind, an overpowering of the will. Physical brutality is merely a means to that end. Some endure blows more easily than protracted questioning. Loss of consciousness ends physical torture. There is no release from the "suction process" of relentless interrogation—except coerced confession.

That the means of physical coercion are diverse, flexible, that the methods of intimidation are adjusted to the mentality and experience or inexperience of the victim, and that mental coercion is even more frequent than physical, were distinctly recognized by the Wickersham Report, that is, the Report on Lawlessness in Law Enforcement, Report No. 11 of the National Commission on Law Observance and Enforcement (1931), which inspired the line of cases of this Court beginning with *Brown* v. *Mississippi*, 297 U. S. 278. The Wickersham Report found (at page 158):

> "The third degree—the inflicting of pain, physical or mental, to extract confession or statement—is widespread throughout the country • • • The method most commonly employed is protracted questioning. Methods of intimidation adjusted to the age or mentality of the victim are frequently used • • • Prolonged illegal detention is a common practice. The law requires prompt production of a prisoner before a magistrate. In a large majority of the cities we have investigated this rule is constantly violated."

The departure of the Illinois Supreme Court in this case from the generation-old wisdom of the Wickersham Commission thus has a tendency, of a potency past calculation, to aggravate "third degree" practices.

B. The Decision Below Is Not in Accord With the Decision of This Court in Chambers v. Florida, 309 U. S. 227. Here Too the Undisputed Facts Show That Mental Compulsion Was Applied.

It is clear from the testimony of the State's own witnesses in the case at bar and was recognized by the court below that Reck, then an inexperienced, mentally retarded adolescent, was arrested on suspicion without warrant, held without charge and *incommunicado* for a week, and, despite his illness and hospitalization during his detention, was subjected to protracted and severe cross-examination by police and prosecutors, even when he was painfully ill.

In consequence the following finding made by this Court in *Chambers* v. *Florida*, 309 U. S. 227, 228, 239, is on its face directly applicable:

> "Here the record develops a sharp conflict upon the issue of physical violence and mistreatment, but shows, without conflict, the dragnet methods of arrest on suspicion without warrant, and the protracted questioning and cross-questioning of these ignorant young * * * tenant farmers, by state officers * * *, in a fourth floor jail room, where as prisoners they were without friends, advisers and counselors, and under circumstances calculated to break the strongest nerves and the stoutest resistance. Just as our decision in *Brown* v. *Mississippi*" (in which physical coercion was undenied) "was based upon the fact that the confessions were the result of compulsion, so in the present case, the admitted practices were such as to justify the statement that, 'The undisputed facts show that compulsion was applied'."

In the *Chambers* case, as in this case before the Court, a number of young suspects were rounded up, held *incommunicado* for a week, and each day subjected to persistent and repeated questioning, until one of them "broke". The questioning continued for 5 days (at 231),

but the 30 to 40 suspects (at 230) were questioned in rotation one at a time by 4 to 10 policemen for a few minutes each time (at 231, 239). Of such practices this Court said:

> "We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws. The Constitution proscribes such lawless means irrespective of the end, * * * Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by the record shall send any accused to his death. No higher duty, nor more solemn responsibility rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution."

C. The Decision Below Is Not in Accord With the Decision of This Court in Watts v. Indiana, 338 U. S. 49.

The "Suction Process" of Unrelenting Interrogation to Which Petitioner Was Subjected Over a Period of Four Days for the Purpose of Wrenching from Him Evidence Which Could Not Be Obtained from Him in Open Court, With Its Safeguards, Was a Species of Coercion.

Use of Incriminating Statements Thus Extracted from Him to Obtain His Criminal Conviction Denied Him Due Process of Law.

The chronology of the protracted questioning of petitioner is not in dispute. Reck was arrested on Wednesday, March 25, 1936, at 11:30 a. m. On that day he was questioned from 11:30 until 12 noon and from 2:15 p. m. until 6 p. m. On Thursday, March 26, he was questioned all day. On Friday, March 27, he was questioned 5 or 6 hours, until he fainted and was taken to the hospital; on being returned therefrom he was questioned two or three hours

more, then vomited blood and was taken to the hospital a second time and spent the night there. On Saturday, March 28, he was taken out of the hospital in a wheel chair, questioned for 4 hours, then taken to the State's Attorney's office, where he was questioned for the rest of the afternoon, until at about 6 p. m. he "confessed".

This schedule is similar to that in *Watts* v. *Indiana*, 338 U. S. 49. Watts was arrested on Wednesday, November 12, 1947, on suspicion of rape. Later on the same day the body of a woman was found under conditions suggesting murder in the course of an attempted rape. The police then began to question Watts about this second crime. He was first questioned by police officers in relays from 11:30 p. m. to 2:30 or 3 a. m. the following morning. The same procedure of persistent interrogation from about 5:30 p. m. until about 3 a. m. the following morning, by a relay of 6 to 8 officers, was pursued on Thursday, the 13th, Friday, the 14th, Saturday, the 15th, and Monday, the 17th. Sunday was a day of rest. About 3 a. m. on Tuesday morning, November 18th, Watts made an incriminating statement after continuous questioning since 6 p. m. Monday evening. The statement did not satisfy the prosecutor, who questioned Watts further until he yielded a more incriminating document. Although the law of Indiana, like the law of Illinois (Illinois Rev. Stat., ch. 38, § 660), required that persons arrested be given a prompt preliminary hearing before a magistrate, Watts was, like Reck, given no preliminary hearing during the entire period of interrogation, and was, like Reck, without professional or even friendly advice.

Watts' conviction of murder was affirmed by the Supreme Court of Indiana, but reversed by this Court, with an opinion containing the following well known language:

> "A statement to be voluntary need not be volunteered. But if it is the product of sustained pressure

> by the police it does not issue from a free choice. When a suspect speaks because he is overborne, it is immaterial whether he is subjected to a physical or a mental ordeal. Eventual yielding to questioning under such circumstances is plainly the product of the suction process of interrogation and therefore the reverse of voluntary. We would have to shut our minds to the plain significance of what here transpired to deny that this was a calculated endeavor to secure a confession through the pressure of unrelenting interrogation. The very relentlessness of such interrogation implies that it is better for the prisoner to answer than to persist in the refusal of disclosure which is his constitutional right. To turn the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court with all its safeguards, is so grave an abuse of the power of arrest as to offend the procedural standards of due process." (53, 54.)

The opinion below, without expressly stating that the constitutional quality of the detention was thereby affected, notes that the petitioner was originally arrested because of suspected involvement in other offenses (as was Watts), that "in the first three days of confinement" (in fact, the first two days), the interrogation related to alleged crimes other than the Peacock murder, and that "for only twenty-four hours before the confessions were obtained were the boys asked about the instant homicide." (R. 1124.) The opinion below then states, "We are of the opinion that petitioner's constitutional rights were not infringed under the facts as disclosed by the record in this case. *People* v. *Kelly*, 404 Ill. 281.)" (*idem.*)

The coercive pressure, the overpowering effect of the "suction process" of relentless interrogation is hardly nullified because the specific subject-matter of the questioning is changed from time to time. An incommunicado detainee who has been severely grilled by the police for

several days is not restored to pristine freshness of mind by being suddenly accused of a hitherto unmentioned murder.*

D. The Decision Below Is Not in Accord With the Decision of This Court in Haley v. Ohio, 332 U. S. 596.

The Incommunicado Detention and Prolonged Interrogation of a Mentally Retarded Adolescent, Such as Petitioner Then Was, for the Purpose of Extracting Confession from Him, Constitutes Coercion and Renders the Incriminating Statements so Obtained Coerced Confessions.

Petitioner was chronologically 19 years of age at the time of his detention and questioning, but a few years before, when he had a chronological age of 15, the Institute for Juvenile Research of Chicago had found that he had a mental age of 8 years, 10 months. (R. 27, Abst. 18.) Two years before that examination he had been placed in an institution for the feebleminded, where he had passed a year as an inmate. (R. 26, 27, Abst. 17, 18.) His education had stopped at 7th grade, which he had failed to complete before he dropped out of school at the age of 16. (R. 15, 16, Abst. 8, 9.) His business experience had consisted of one week's employment as a milkman's assistant. (R. 15, 16, Abst. 8, 9.) It is difficult to conceive of a more eligible candidate for the "third degree".

The place of questioning was that celebrated locus for the "third degree", the back room of a police station. The

* The one case cited by the court below in support of its conclusion—*People* v. *Kelly*, 404 Ill. 281 (1949)—is of doubtful relevancy, for the reason that the suspects were there questioned about only one crime. The *Kelly* case concerns an incommunicado detention and interrogation from 9 p.m. Saturday evening until Monday morning; the first confession was obtained on Sunday evening (284, 285); the second confession was made on Monday morning, after which the prisoner appealing was permitted to consult with relatives (287); the arraignment was had on Tuesday morning. It was there held that the courts of committing magistrates need not remain open on Saturday evenings and Sundays. (288, 289.)

length of time before confession was almost 80 hours. The manner and extent of the questioning were recurrent grilling for as much as 5 or 6 hours at a time, by not only the local police station captain and his assisting officers, but by detectives from the homicide squad and top-flight prosecutors from the State's Attorney's Office.

From this there emerges the very profile of what this Court in *Haley* v. *Ohio*, 332 U. S. 596, found to be extremely coercive circumstances. Haley was a 15 year old boy who was arrested at about midnight on a charge of murder. (Petitioner's actual mental age at the time of his unlawful detention was probably not as much as 15.) Haley was questioned by relays of police from midnight to 5 a.m., when he "confessed". (Reck was questioned recurrently and at length over a period of almost 80 hours.) Haley, like Reck, was without benefit of friends or counsel to advise him. Like Reck, Haley, when confronted with alleged confessions by alleged accomplices, signed a "confession" typed by the police. As with Reck, his confession was admitted in evidence over objection and he was sentenced to life imprisonment.

This Court, in reversing Haley's conviction, used language which applies with equal force to Emil Reck:

> "What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. * * * We cannot believe that lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him. No friend stood at the side of this 15 year old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make

sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No friend or counsel was called during the critical hours of questioning. A photographer was admitted once he broke down and confessed. But not even a gesture toward getting a lawyer for him was ever made."

Photographers were in fact admitted to Reck's bedside at the County Hospital to take his picture for the newspapers (R. 167, Abst. 59), but Reck's father was not notified that he had been taken to the hospital (after 2½ days in custody). (R. 426, Abst. 134.) Prosecutor Kearney testified vaguely that Reck's father did not see him until Sunday, March 29 (R. 351, Abst. 113), a day after he made the confession. Reck himself testified that he did not see any member of his family until he was arraigned on the following Thursday, April 2nd (R. 280, Abst. 92) and that he did not have the advice of counsel until then. (*Idem.*)

Of such official misconduct this Court said in the *Haley* case:

"This disregard of all the standards of decency is underlined by the fact that he was kept incommunicado for over three days during which the lawyer retained to represent him twice tried to see him and twice was refused admission. A photographer was admitted at once but his closest friend—his mother—was not allowed to see him for over five days after his arrest. It is said that these events are not germane to the present problem because they happened after the confession was made. But they show such a callous attitude of the police towards the safeguards which respect for ordinary standards of human decency compels that we take with a grain of salt their present apologia that the five hour grilling of this boy was conducted in a fair and dispassionate manner. When the police are so unmindful of these basic standards of conduct in their public dealings, their secret treatment of a 15-year old boy behind closed doors * * * becomes darkly suspicious." (599-601.)

Every word of the conclusion of this Court in the *Haley* case is applicable with at least equal force to the case of Emil Reck:

> "The age of the petitioner, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction.
>
> "But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. * * * Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them." (601.)

E. The Decision Below Is Not in Accord With the Decision of This Court in Ziang Sung Wan v. United States, 266 U. S. 1.

The Persistent Interrogation of Petitioner, After He Was Taken Acutely Ill, Fainted Several Times, Vomited, Required Hospitalization and Was Weak and in Continuing Abdominal Pain, Was Coercive.

The Undisputed Facts Show Mental Compulsion Was Applied to Reck. As to That, There Was No Issue Upon Which a Jury or Trier of Facts Should Have Been Required or Even Permitted to Pass.

Because the "Confessions" Were Not Excluded Petitioner Was Denied Due Process of Law.

It is undenied that during Emil Reck's week long incommunicado detention without charge, and before his confession on the fourth day thereof, he was taken ill, fainted several times, vomited blood and was twice taken to the hospital on a stretcher, where he was given two injections of morphine. Reck testified that he was taken ill on the sec-

ond day of his detention and was in intense pain from then until after his confession on the fourth day.

In the statement of facts we have endeavored to make a thorough summary of the available evidence concerning this illness of Reck particularly because of its similarity to the illness of the prisoner in *Ziang Sung Wan* v. *United States*, 266 U. S. 1. The opinion in that case, written by Justice Brandeis in 1924, antedates both *Brown* v. *Mississippi* and the Wickersham Report.

Wan was taken into custody on February 1, 1919, on suspicion of having murdered three other Chinese. He was not formally arrested until February 9. In the meantime he was kept in a secluded hotel room, where he was held incommunicado. Wan, like Reck, was ill during his detention. He suffered from a chronic stomach ailment, which was diagnosed as spastic colitis. (In Wan's case, unlike Reck's, there was no claim or evidence of physical beatings of the prisoner by the police.) Like Reck, he experienced abdominal pains. Like Reck, he vomited, was constipated, had difficulty eating. Like Reck, he spent part of his detention in a sickbed. Like Reck, he repeatedly asked to be left alone. And Wan, again like Reck, was not left alone, but, regardless of his protests, was repeatedly questioned.

Of Wan a detective testified: "Defendant had continually asked to be left alone and not bothered. Whenever he was asked a pointed question, he would say, "Let me alone * * * I don't feel well * * *. We got tired of it * * *. We did not leave him alone."

Finally Wan confessed to the murders. He was indicted, found guilty and sentenced to be hanged. The conviction was reversed by this Court. The opinion of Justice Brandeis stated:

> "The undisputed facts show that compulsion was applied. As to that matter there was no issue upon

> which the jury properly could have been required or permitted to pass. The alleged oral statements and the written confession should have been excluded." (17)

In the instant case the opinion below rests expressly on the basis that, "Two trial judges and one jury saw and heard the witnesses on both sides and reached the conclusion that petitioner's charge of coercion was without merit. Such finding will not be disturbed unless manifestly against the weight of the evidence." (R. 1124.)

This is grave error. The undisputed facts show that compulsion was applied to Reck. As to that matter, there was no issue upon which a jury or trier of facts could properly have been required or even permitted to pass. Because the "confessions" were not excluded petitioner was denied due process of law.

II.

THE EVIDENCE THAT PETITIONER WAS ALSO PHYSICALLY COERCED IS COGENT AND, IN THE ADMITTED CIRCUMSTANCES, CONVINCING. THE FINDING THAT HE WAS NOT IS MANIFESTLY AGAINST THE WEIGHT OF THE EVIDENCE, CANDIDLY CONSIDERED, AND SHOULD BE REVERSED.

It is only because there are so many undisputed facts upon which it can be established as a matter of law that petitioner was mentally coerced that we have sought to simplify the task at hand and have accorded only secondary importance to the question of physical coercion, which entails the weighing of contradictory evidence.

But that the contention of physical coercion is denied does not exclude that claim from inquiry. The greater portion of the record is concerned with Reck's detailed testimony that he was physically manhandled, beaten and tortured by the police, and by the repetitious litany of

the State's witnesses, denying, in response to leading questions and in stock phraseology, that Reck was the recipient of such official force and violence.

In view of the sharp contrast between the naive, but vivid, factual and detailed testimony of this mentally retarded adolescent in support of his claim of physical coercion, and the colorless, generalized, hackneyed, stereotyped testimony of the experienced prosecutors, and hard-bitten policemen, detectives and police officials, who sought, with complacent ineptness, to contradict not only Reck but all the indubitable surrounding circumstances, the evidence that Emil Reck was physically coerced is, candidly considered, overwhelming. The finding that he was not is manifestly against the weight of the evidence and should be reversed.

III.

THE POST-CONVICTION TRIAL COURT DISMISSED THIS POST-CONVICTION PETITION WITHOUT READING OR EVEN SEEING (ACCORDING TO ITS OWN STATEMENT) THE TRANSCRIPT OF EVIDENCE RE THE VOLUNTARINESS OR INVOLUNTARINESS OF PETITIONER'S CONFESSIONS, HEARD IN THE MURDER TRIAL, OUTSIDE THE PRESENCE OF THE JURY, AND INTRODUCED INTO EVIDENCE IN THE POST-CONVICTION PROCEEDING.

THIS TRANSCRIPT, CONSISTING OF MORE THAN 400 PAGES, CONTAINS THE TESTIMONY OF RECK (OVER 100 PAGES), THE TESTIMONY OF THE LEADING PARTICIPANTS IN THE SECURING OF THE CONFESSIONS AND MUCH MEDICAL TESTIMONY. IT IS THE BEST EVIDENCE AVAILABLE ON THE MATTERS IN ISSUE.

BY FAILING TO EXAMINE THIS EVIDENCE THE POST-CONVICTION TRIAL COURT NOT ONLY COMMITTED REVERSIBLE ERROR, BUT DEPRIVED EMIL RECK ONCE MORE OF DUE PROCESS OF LAW.

The opinion below is based on the finding that "Two trial judges and one jury saw and heard the witnesses on both sides and reached the conclusion that petitioner's charge of coercion was without merit" (R. 1124) and the principle that "Such finding will not be disturbed unless manifestly against the weight of the evidence." (*Idem.*)

This result was reached only by ignoring:

(1) The hearings on the confessions, before first the judge alone, and then the jury, in the murder trial court occurred in May, 1936. (R. 551-981, Abst. 160-249; R. 981, Abst. 249-250.) This was before this Court had elucidated the application of the Fourteenth Amendment to the use of coerced confessions in state criminal trials and before it had developed its full doctrine of mental coercion in the classic line of cases, stemming from *Brown* v. *Mississippi*, 297 U. S. 278, on which we rely.

(Of this line of cases, only the first, *Brown* v. *Mississippi*, had been decided and that had been but a few months before the murder trial at which petitioner was convicted; the *Brown* case concerned only undisputed physical coercion.)

(2) At the post-conviction hearing, which was had under the Illinois Post Conviction Hearing Act (Ill. Rev. Stat., ch. 38, §§ 826-832)—a statute enacted in order to afford persons imprisoned in the penitentiary a means of opening an inquiry into the intrinsic fairness of their trial, "even though it appears proper on the surface" (*Carter* v. *Illinois*, 329 U. S. 173, 175)—a statute enacted in response to this Court's severe criticism in *Marino* v. *Ragen*, 332 U. S. 561, 570, of the State's post-conviction "procedural morass", the "Illinois merry-go-round of *habeas corpus, coram nobis* and writ of error"—at petitioner's post-conviction hearing the following sequence of events and statement took place:

> (a) Denial of this petition under the Post-Conviction Hearing Act was entered by the post-conviction trial court on May 1, 1953. (R. 493, Abst. 144.)
>
> (b) The court prefaced this oral order with an oral opinion rendered immediately before it entered the order. (R. 488-492, Abst. 142-144.)
>
> (c) This oral opinion was preceded by oral argument of counsel. (R. 460-488, Abst. 142.)
>
> (d) Shortly before that, in the same hearing on May 1, 1953, during a colloquy with counsel, the trial judge made the following statement:
>
> "The Court: Well, I haven't seen the transcript yet." (R. 445, Abst. 140.)

This transcript of the hearing on the voluntariness or involuntariness of the confessions of Emil Reck, heard outside the presence of the jury in the murder trial, had been gathered together by Reck through the years. (R. 329, Abst. 105, 106; R. 493, Abst. 144.) It had been introduced

into evidence at the post-conviction proceedings as exhibits. (R. 439-444, Abst. 137-139.) It is the heart of Reck's case. The transcript, which is 430 pages long (R. 551-981, Abst. 100-249), contains the testimony of Reck (over 100 pages), his corroborating witnesses, the police officers and prosecutors who obtained the confessions, and much medical evidence. This testimony was all given on May 6 and 7, 1936, not more than six weeks after the confessions were made on March 28 and 29, 1936.

The transcript is the best evidence available on the matters in issue, as the post-conviction trial judge himself recognized. (R. 320, 321, Abst. 102, 103; R. 334, Abst. 107.)

The failure of the court below to examine this evidence effectively deprived petitioner of a hearing before a tribunal. It impaired, once more, Emil Reck's right to due process of law, guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted, the denial of the post-conviction petition should be reversed and the judgment of murder entered against petitioner should be set aside.

Respectfully submitted,

EDMUND HATFIELD,
Attorney for Petitioner.

APPENDIX A.

THE CRIMINAL COURT OF COOK COUNTY
STATE OF ILLINOIS
Chicago

THE PEOPLE OF THE STATE OF ILLINOIS,
vs.
EMIL RECK,
Defendant.
No. 36-0459

May 12, 1936.

Before JOSEPH BURKE, Judge of the Criminal Court of Cook County, State of Illinois.

BURKE, *Judge* (orally): The Court has listened attentively to all of the testimony presented in support of the exhibits and against the introduction of the exhibits. The law in this state is that the burden is on the People to establish by a preponderance of the evidence that a confession or what is introduced as a confession was made voluntarily and freely. If there was any coercion or promise of immunity or reward for making the confession, or if the person making the confession was abused in any way either by striking or threatening or any form of mental or physical abuse, then the confessions would not be free and voluntary confessions.

After considering all the testimony introduced on this preliminary hearing, the Court finds that the confessions

are free and voluntary; and the Court is satisfied that that is established not only by a greater weight of the evidence, but by an overwhelming weight of the evidence. Therefore, the Court will admit these confessions. The Court has admitted the confessions. Now, as to the weight that shall be given to the confessions, that is for the jury.

APPENDIX B.

THE CRIMINAL COURT OF COOK COUNTY
STATE OF ILLINOIS
Chicago.

EMIL RECK,
Petitioner,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.
No. P. C. 255

May 1, 1953.

Before DANIEL A. COVELLI, Judge of the Criminal Court of Cook County, State of Illinois.

COVELLI, *Judge* (orally): Well, the defendant testified that he was arrested on March 25th and that he was taken to a hospital on March 27th. Now, without considering the testimony of the police officers at all, Mr. Kearney testified that he was an Assistant State's Attorney at that time and is now practicing law; that on Friday, at about 10 P. M., he went to the North Avenue Station, after having received a phone call from Chief Aitken; that he told everyone there that he was from the State's Attorney's Office; that he called Dr. Scatliff and Dr. Day and had them go to the County Hospital to examine the petitioner because the petitioner had complained that he was ill; that at the time he took the statement of the petitioner, a member of the Grand Jury was present and several doctors were

present during the taking of the statement of the petitioner. He said that he and Assistant State's Attorney Crowley, now Judge Crowley, questioned Reck and Reck gave the answers. He says that he saw no marks or bruises on Reck. Reck at no time complained of any brutality. No one struck or threatened Reck in the presence of Mr. Kearney. He says that he first saw Reck and then the police brought him to the State's Attorney's Office from the County Hospital. Reck told Mr. Kearney that he had been to the County Hospital, but he didn't tell him why. Then Kearney called Dr. Seatliff and Dr. Day and asked them to go to the County Hospital to see what, if anything, was wrong with Reck. Dr. Seatliff testified that he saw Reck at the County Hospital in the middle of the night on Friday to Saturday and that Dr. Day was with him. That, first, he made a visual examination; that when he arrived in the room Reck was asleep, but he was aroused, and Reck was asked if he was ill and Reck merely grunted. The doctor asked Reck if he was in pain and Reck said "No". He asked Reck what the trouble was and Reck pointed to his stomach. The doctor then testified that we looked him over, he and Dr. Day; that he, Dr. Seatliff, found no bruises or discolorations. Dr. Seatliff said that he pressed on the stomach of this petitioner and the petitioner said nothing. Again, on Sunday, he saw the petitioner and the petitioner had no marks or bruises; that he was asked if he had been mistreated and the petitioner said he had not. The petitioner was asked if he had eaten and the petitioner said he had eaten. On cross-examination he testified that he did not examine the petitioner's stool or urine; that he pressed on his abdomen and there was no evidence of pain; that he had been told that petitioner bled from the mouth, while at the police station, and he testified that bleeding from the mouth could be caused by dental disorders, tumors, by injuries to the stomach, that

he had been told that defendant had a gastric ulcer and that, in his opinion, a gastric ulcer could cause bleeding. He also testified on recross examination that a blow on the stomach would aggravate and cause a dormant ulcer to become active and cause bleeding. Captain Aitken testified that while he was talking to the defendant, to the petitioner, the petitioner commenced to bleed from the mouth; that he asked the petitioner what the trouble was, and the petitioner said he had ulcers; that then the doctor recommended that the petitioner be taken to the hospital. Mr. Blair Varnes also testified, an attorney, that he was present at the taking of one of the statements, and he said he saw no bruises on the petitioner and the petitioner made no complaint to him. I do not believe there is sufficient evidence before this Court to disturb the finding of the jury. The motion for a new trial is denied. The petitioner will be returned to the penitentiary by the Sheriff of Cook County.

APPENDIX C.

THE SUPREME COURT OF ILLINOIS,
Springfield.

EMIL RECK,
Plaintiff-in-Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant-in-Error.

No. 33630.
Error to Criminal Court, Cook County.

November 23, 1955.

Before HARRY B. HERSHEY, *Chief Justice*, and JOSEPH E. DAILY, GEORGE W. BRISTOW, RAY I. KLINGBIEL, WALTER V. SCHAEFER, RALPH L. MAXWELL and CHARLES H. DAVIS, *Justices.*

BRISTOW, *Justice*: Emil Reck, plaintiff in error, comes here from the circuit court of Cook County where he was unsuccessful in a hearing under the Post-Conviction Hearing Act. On May 29, 1936, Reck, whom we shall refer to as the petitioner, was sentenced to the Illinois Penitentiary for a term of 199 years as a result of a jury verdict finding him guilty of murder.

Briefly the facts that produced petitioner's conviction are the following: Dr. Peacock, a prominent Chicago pediatrician residing in an Edgewater Beach apartment, on the night of January 2, 1936, responded to a telephone call at his home to administer medical aid to a child living

at 6438 North Whipple Avenue. He left his apartment in his automobile but did not return. The following afternoon his body was found, drenched in blood, slumped on the rear floor of his car, parked at 6326 North Francisco Avenue, Chicago. There were thirteen deep lacerations on his head and a bullet hole passing through his brain. There were no fingerprints. There were no clues. The doctor had no enemies. The Chicago Medical Society offered a substantial reward. Every conceivable effort was made to find a solution to this mysterious brutal homicide. Daily newspaper notoriety attended the search for the guilty. Almost three months elapsed before a solution appeared in the confession obtained from four teenage boys.

On Wednesday, March 25, 1936, petitioner, age 19, Durland Nash and Robert Goeth also 19 and Michael Livingston, age 17, were arrested on suspicion of stealing bicycles. Livingston was released to his mother on Thursday and later rearrested. These boys were questioned about many robberies and burglaries and were shifted from one police station to another, being on parade at many "show ups". By accident these boys were questioned about the Peacock murder, and then, only after having been detained 72 hours, Durland Nash was the first to confess, implicating Goeth, Reck and Livingston. On the following Sunday, the four boys were taken to the private office of the first assistant State's Attorney Crowley to make a joint confession in the presence of a court reporter. Their statement of what transpired on the night of January 2, 1936, runs as follows:

In the early evening of January 2, 1936, the four boys met and were riding in a Ford automobile driven by Jimmy Nash. They stopped at a Walgreen drug store somewhere on North Western avenue. Robert Goeth and Nash got out of the car, went into the drug store and called Dr. Peacock and requested that he make a pro-

fessional call on a sick child at 6438 North Whipple Street. The boys, while planning the robbery, had previously explored this neighborhood and found it to be dark and unfrequented. The two boys came back to the car and reported that their victim would be at the above address shortly, whereupon they drove there and parked their car nearby. Dr. Peacock arrived, parked his car in front of 6438, alighted from the car with his medicine case, and was approached by Robert Goeth who put a gun in his back and ordered him to reenter his car, which he did. Livingston remained in the Ford and followed the doctor's car which was driven by Nash with Goeth sitting on his right and the petitioner with the doctor in the rear seat. After they drove some distance they ordered the doctor out of his car and demanded his money. He said he didn't have any money and started fighting with Goeth. When Goeth got loose he fired two shots at the doctor, and while the doctor was lying on the ground breathing heavily, Reck finished killing him with a wooden club about one foot in length that he carried as a weapon. The boys searched the doctor's pockets and found $20, divided it equally, and left him lying on the floor of the rear seat of his car. Goeth also struck him several times with the butt of his gun while he was lying on the ground. After driving away the four separated and went their respective ways.

The foregoing is only a very brief summary of that which is contained in question and answer statements covering 13 printed pages. After being typed it was read and signed by each. It contained the usual warning that it would be used against them in criminal proceedings that would ensue. The basic contention of petitioner is that his conviction was predicated upon a confession obtained from him by coercion.

Apart from the confession, Reck has constantly pro-

claimed his innocence. Emil Reck was a lad that was classified as a border line mental defective with an IQ of not more than 70. Prior to his entry of a plea of not guilty and trial, he was found not to be a feeble minded person by a jury that was impaneled to determine that issue. Emil's mother deserted him when he was two years old, and as a dependent, never as a delinquent, he became a ward of the juvenile court of Chicago and for a while was placed in an orphanage. Aside from his retardation, he was never a behavior problem and bore no criminal record. Petitioner was in the custody of police for a week, during which time he was frequently ill, fainted several times, vomited blood on the floor of the police station and was twice taken to a hospital on a stretcher. During that week no formal charge was placed against petitioner, and he was confined practically *incommunicado.* Petitioner details a harrowing story of brutality and mistreatment saying he was beaten and kicked many times, and "I was hanged on the door four or five times and allowed to remain several minutes." The three accomplices were brought back to testify at the post-conviction hearing, and they partly corroborated Reck in his claim of mistreatment and coercion.

It should be observed that petitioner throughout these proceedings has been represented by able and alert counsel. On the original trial a full hearing on the validity of the confession was had outside the presence of the jury. The trial judge ruled that the confession met all legal requirements. A similar hearing was had before the jury. The verdict of guilty and judgment thereon represent another determination that the confessions here under scrutiny did not emanate from coercion. The question of their admissibility was not presented for review on the writ of error in *People* v. *Reck,* 392 Ill. 311.

There were many witnesses on behalf of the people who

gave testimony that contradicted petitioner's tales of brutality. When the confessions were signed they called in former members of a grand jury and disinterested doctors to witness the signing. Assistant State's Attorney Kearney on the post-conviction hearing freely admitted that he did this to buttress his case against future contentions of duress. The police denied categorically all charges of abuse. There were six doctors, several attorneys, court reporter and photographers, all of whom testified that petitioner exhibited no contusions, abrasions, discoloration or any signs of abuse. The record is replete with testimony that when the boys signed the confession they did so freely, voluntarily and without any promise of reward; that they had read the statement over, and that the boys stated that it contained the truth.

There is an irreconciliable conflict in the two factual pictures as presented by the petitioner and the People. Two trial judges and one jury saw and heard the witnesses on both sides and reached the conclusion that petitioner's charge of coercion was without merit. Such finding will not be disturbed by a reviewing court unless manifestly against the weight of the evidence. (*People* v. *Reed*, 333 Ill. 397, 410.) There is little in the record outside the testimony of petitioner and his confederates that the challenged confession was not voluntary. The statements signed by the four boys are complete, detailed and consistent, which, together with the circumstances surrounding their execution compel the conclusion that they represent the truth freely and voluntarily uttered.

The record conclusively demonstrates that petitioner, Nash, Goeth and Livingston had been arrested originally because of their suspected involvement in many robberies and burglaries. The first three days of their confinement was entirely devoted to their being questioned about crimes independent of the Peacock murder. For only twenty-four

hours before the confessions were obtained were the boys asked about the instant homicide. We are of the opinion that petitioner's constitutional rights were not infringed under the facts as disclosed by the record in the case. (*People* v. *Kelly*, 404 Ill. 281.) The judgment of the criminal court of Cook County denying the prayer of the post-conviction petition is affirmed.

JUDGMENT AFFIRMED.

APPENDIX D.

The Judgment of the Court Below.

United States of America.

State of Illinois, } ss.
Supreme Court. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of November in the year of our Lord, one thousand nine hundred and fifty five, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice

Justice Joseph E. Daily	Justice Walter V. Schaefe
Justice George W. Bristow	Justice Ralph L. Maxwell
Justice Ray I. Klingbiel	Justice Charles H. Davis

Latham Castle, Attorney General
Robert G. Miley, Marshal

Attest: Fae I. Searcy, Clerk Pro Tempore.

Be It Remembered, that, to-wit: on the 23rd day of No vember, 1955, the same being one of the days of the ter of Court aforesaid, the following proceedings were, by sai court, had and entered of record, to-wit:

	PEOPLE STATE OF ILLINOIS *Defendant in Error.*	Error to Criminal Court, Cook County. P. C. 255.
No. 33630	*vs.*	
	EMIL RECK, *Plaintiff in Error.*	

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Criminal Court of Cook County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error.

13

FILED
MAR 30 1956
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 579 MISC.

EMIL RECK,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

LATHAM CASTLE,
Attorney General of the
State of Illinois,
Supreme Court Building,
Springfield, Illinois,

JOHN L. DAVIDSON, JR.,
First Assistant Attorney General,

FRED G. LEACH,

EDWIN A. STRUGALA,
Assistant Attorneys General,
Of Counsel.

14

INDEX

PAGE

Statement 1

1. Petitioner's Mentality 1

2. Petitioner's Detention and Interrogation..... 2

3. Petitioner's Illness 5

4. Petitioner's Charges of Physical Brutality... 6

5. Petitioner's Charge Concerning Post-Conviction Court's Conduct 8

Argument 9

I. This Court Does no Weigh Evidence..... 9

II. There is No Record Evidence Supporting Petitioner's Charge Concerning the Post-Conviction Court's Conduct 12, 13

The Court Cannot Be Presumed to Have Acted Improperly 12, 13

Petitioner Has Invited Error, If Any.....12, 13

Petitioner Has Failed To Show Prejudice...12, 13

Conclusion 14

CITATIONS

Cases:

Stein v. *New York*, 346 U.S. 156, 184-5..... 11

Lyons v. *Oklahoma*, 322 U.S. 596, 601, 602-3..... 10-11

Lisenba v. *California*, 314 U.S. 219, 239-41.....10, 11

Wan v. *United States*, 266 U.S. 1, 14..... 10

Palakiko v. *Harper*, C.A. 9th Cir., 209 F. 2d 75, 84, 90-3 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. ————

EMIL RECK,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Statement of the Case

1. *Petitioner's mentality.* Petitioner in his brief at pages 14-9 recites at length instances to support a contention that he has been at all times and remains a "borderline mental defective." Yet he admits that he has had "no record of nervous or mental disease." And he further admits that he has had "no peculiarities of conduct, mood, speech or appearance." He also admits that he "spent almost a year in the C.C.C. and the P.W.A. . . ."

Inferentially, the record further shows that petitioner was sufficiently intelligent to be trusted with his part in the lawless scheme cleverly devised by four males on the

threshold of manhood. Three of them, including petitioner, were 19 years of age at the time of the commission of the crime, and the fourth, 17 (Pet. br. 11-2, 18). To the jury which found petitioner guilty it reasonably could have seemed incredible that the other three would have shared their risky ventures with and subjected their future fortunes to the kind of personality petitioner would like this court to conclude he has been and has remained.

The Director of the Behavior Clinic found petitioner neither insane nor feebleminded but of "dull normal intelligence." A jury impaneled prior to the trial found him "not committably feebleminded. . . ." Petitioner admits these facts in his brief.

2. *Petitioner's detention and interrogation.* Petitioner was first arrested and taken into custody at 11:30 A.M. Wednesday, March 25, 1936. He and his three companions were suspected of stealing bicycles (Pet. br. 7) and a saxophone taken in a burglary (Abst. 221; Rec. 909). He was taken to the North avenue police station in Chicago and there asked only one question, namely, whether he knew of any "jobs" pulled by two of his companions (Abst. 31; Rec. 56-7). Approximately at noon or shortly thereafter he was taken to the Shakespeare station where he remained until around 2 P.M. and where no police officers or anyone talked to him (Abst. 32-3; Rec. 62).

At approximately 2:15 P.M. he was returned to the North avenue station where he remained until about 5 P.M. when he was taken to the Warren station (Abst. 37-40; Rec. 89-101). He had had coffee and a ham sandwich at the North avenue station and was given one bologney sandwich at the Warren station (Abst. 40; Rec. 102-3). He was given milk at the Shakespeare station (Abst. 198; Rec. 811-2).

During his afternoon hours at the North avenue station he was questioned concerning numerous thefts and hold-ups he and his companions might have committed, and numerous victims were brought in for the purpose of identifying petitioner and his companions during the afternoon, the following day, Thursday, and until about 7 P.M. Friday (Abst. 94-9; Rec. 288-311). He remained at the Warren station overnight until the following morning sometime, Thursday, and during the whole of that time was not interrogated by anyone (Abst. 40-1; Rec. 100-4).

Thursday morning he was returned to the North avenue station (Abst. 41; Rec. 104) where he was again questioned and where the show-up's continued (Abst. 96; Rec. 297-8). There is no evidence in the record of night-long interrogation the evening of the 26th, Thursday, or the early morning hours of the 27th, Friday, nor any record evidence where or how petitioner spent the night.

Friday the 27th petitioner was again questioned at the North avenue station concerning thefts and again numerous victims were called in and asked to identify him and his

companions (Abst. 96; Rec. 297-8). Early that evening, at approximately 7:20 P.M. (Abst. 66; Rec. 179), he was complaining of constipation (Abst. 67; Rec. 180), had fainted a couple of times (Abst. 69; Rec. 184) and was sent to the county hospital where the examining doctor found nothing wrong with him and refused him, telling the police to take petitioner back (Abst. 69; Rec. 184). At approximately 8:45 P.M., following the first hospital visit, another doctor present at the North avenue station examined petitioner, who was complaining of illness, and found nothing seriously or objectively wrong with him (Abst. 70-1; Rec. 184-6). At approximately 9:30 P.M. petitioner for the *first time* was accused of the Peacock murder, hemorrhaged or vomited blood and was again taken to the county hospital where he spent the entire night, sleeping until approximately 10:30 A.M. Saturday, without interrogation by the police (Abst. 71, 77, 128; Rec. 186, 197, 404-5). Thereafter petitioner was taken, first, to the North avenue station, but thereafter late the same morning (Abst. 129; Rec. 407) or shortly after noon (Abst. 109; Rec. 339) to the State's Attorney's office located in the criminal courts building where later that afternoon a joint confession was taken from petitioner and his companions.

Between 11:00 P.M. and 12:00 midnight Friday photographers were permitted to take pictures of petitioner which appeared in the newspapers (Abst. 59; Rec. 167).

Sunday petitioner saw his father and visited with him. The assistant state's attorney who so testified said he also talked with petitioner's father (Abst. 113; Rec. 351-2) and was corroborated by one police officer (Abst. 132; Rec. 417). On Sunday petitioner signed an individual statement confessing his guilt (Abst. 113; Rec. 350-53) before former members of the grand jury, numerous other witnesses and newspaper photographers (Abst. 55; Rec. 157-8).

Monday the 30th the case went to the Grand Jury and on Tuesday petitioner appeared in court for the first time (Abst. 142; Rec. 469).

3. *Petitioner's illness.* Friday the 27th, during the afternoon, petitioner had not complained of illness (Abst. 134; Rec. 425-6) and apparently first complained of constipation, and fainted, at approximately 7:00 P.M. of that day (Abst. 66, 67, 69; Rec. 179-80, 184). And at that time he was immediately taken to the county hospital where he was examined and refused admission because the examining doctor found nothing wrong with him. The doctor told the police to take the petitioner back (Abst. 69; Rec. 184). Thereafter, at approximately 8:45 P.M. he again complained of illness and was examined by a doctor present at the North avenue station and found not seriously or objectively ill (Abst. 70-1; Rec. 184-6). At approximately 9:30 P.M. of that evening petitioner was for the first time accused of the Peacock murder, hemorrhaged or vomited a relatively small amount of blood and was immediately taken to the

county hospital. He was there medically treated and slept until approximately 10:30 A.M. Saturday (Abst. 71, 77, 128; Rec. 186, 197, 404-5). As late as Sunday the 29th, when the petitioner signed his individual statement in the State's Attorney's office, petitioner was not complaining of illness (Abst. 119; Rec. 370), although petitioner apparently became somewhat ill and vomited at approximately 9:30 or 9:45 that evening (Abst. 80; Rec. 202).

At the time that petitioner hemorrhaged or vomited some blood he told the examining police officer that he had developed an ulcer in the C.C.C. (Abst. 130-2; Rec. 412-5), and was heard by a doctor witnessing his illness (Abst. 46, 70; Rec. 124-5, 185). This was further corroborated by an assistant state's attorney (Abst. 115; Rec. 357).

4. *Petitioner's charges of physical brutality.* Petitioner testified that on March 25, Wednesday, while in the North avenue station during the afternoon, he was hit many times in the jaw and in the stomach by two police officers (Abst. 33-4; Rec. 68-70). Afterward another officer hit him with a blackjack on his feet, back, chest and stomach (Abst. 34; Rec. 71-3). He also testified that he was hit all over the body in this manner at least 20 or 25 times by one officer and innumerable times by another (Abst. 38; Rec. 92-3).

Further he testified that he was twice or more times on Wednesday handcuffed to chairs and then, while handcuffed, raised and suspended on one of the doors of the station (Abst. 35-7; Rec. 75-88). Petitioner testified further that he was treated in this manner—viciously and brutally beaten all about his body and head and face and suspended by manacled hands from doors—during the entire three day period commencing Wednesday and concluding on Friday (Abst. 76; Rec. 196).

Every doctor that examined him on Friday and thereafter testified that they saw no signs or marks of physical brutality (Abst. 58, 61, 65, 69, 70, 119; Rec. 165, 171, 177, 184, 185, 368), and at least six doctors so testified. The various police officers and assistant state's attorneys also so testified without exception (Abst. 108, 134; Rec. 336, 424). Photographs were further taken of the petitioner that Friday night and Saturday afternoon, which appeared in the newspapers, and petitioner was seen by his father and numerous other witnesses, as has already appeared in this brief. Further, all of the police officers, assistant state's attorneys and others variously and individually charged by petitioner as the persons who in some degree beat him altogether denied these charges and testified that none of them at any time physically or otherwise mistreated the petitioner and that none saw others mistreat the petitioner in the presence of the witness (Abst. 94, 129, 134, 220-1, 225-7, 227-32; Rec. 290-1, 406-7, 424, 905-43).

5. *Petitioner's charge that the post-conviction trial judge did not read the transcript of evidence of the original trial on the question of the coerced confession.* Nothing anywhere in the record affirmatively establishes that the trial judge hearing the post-conviction proceeding did not read the original transcript. Petitioner in his brief has not alleged or shown evidence to the contrary.

Petitioner moved orally for a new trial, which was denied, in the post-conviction proceeding (Abst. 144; Rec. 492-3), and none of the grounds of the motion appears in the record. The record further fails to show that at any time during the proceeding did petitioner object that the trial judge was not reading, had not read, would not or should read the original transcript before making his findings and entering his judgment.

ARGUMENT

I.

There is record evidence supporting the findings, verdict and judgment of the original trial, the judgment entered in the post-conviction proceeding and the opinion of the Illinois Supreme Court. Therefore, this court should not and will not weigh that evidence.

The People of the State of Illinois pick no quarrel with and remain adamant in their support of the constitutional principle invoked by petitioner and its applications by this court in a long line of decisions cited by petitioner in his brief at pages 46-7 denouncing state court convictions based on coerced confessions.

But petitioner's febrile attempt to breed the seeds of his contentions in the atmosphere created by the factual circumstances involved in these decisions provides no homeopathic cure for the impotency of his own contentions.

Petitioner cannot establish analogies merely by recounting instances of petitioners hung and re-hung by ropes to trees, severely and continually whipped in the most savage and brutal manner by state authorities (who it must be noted boldly and baldly admitted their uncivilized behavior in open court), as in *Brown* v. *Mississippi*, 297 U. S. 278;

or instances of petitioners interrogated interminably day and night, over a period of a week or two weeks, or throughout the whole of one night virtually without rest and nourishment, as in *Chambers* v. *Florida*, 309 U. S. 227; *Watts* v. *Indiana*, 338 U. S. 49; or instances containing these elements of physical or mental coercion compounded by the insistent, insidious, suggestive and demoralizing wheedling of a psychiatrist with knowledge of hypnosis, as in *Leyra* v. *Denno*, 347 U. S. 556; or compounded by continuous and severe illness and lack of adequate and proper medical care, as in *Wan* v. *United States*, 266 U. S. 1; or compounded by extreme and tender youth, as in *Haley* v. *Ohio*, 332 U. S. 596. Again to be noted, as in the *Brown* case, so in each of these cases, evidence of these facts was undisputed and, in several, even boldly and callously asserted by state authorities.

But several elements identified in each of these decisions —the mere questioning of a suspect while in the custody of police officers—have not by this court been held, without substantially more, sufficient to constitute a want of common law or due process of law. *Lisenba* v. *California*, 314 U. S. 219, 239-41; cf. also *Wan* v. *United States*, 266 U. S. 1, 14.

Reiterating its position in *Lyons* v. *Oklahoma*, 322 U. S. 596, 601, this court also said (602-3):

> "* * * *But where there is a dispute as to whether the acts which are charged to be coercive actually occurred, or where different inferences may fairly be drawn from admitted facts,* the trial judge and the jury are not only in a better position to appraise the truth or falsity of the

defendant's assertions from the demeanor of the witnesses but the legal duty is upon them to make the decision. *Lisenba* v. *California, supra,* p. 238.

"Review here deals with circumstances which require examination into the possibility as to whether the judge and jury in the trial court could reasonably conclude that the McAlester confession was voluntary. The fact that there is evidence which would justify a contrary conclusion is immaterial. To triers of fact is left the determination of the truth or error of the testimony of prisoner and official alike. * * *" (Emphasis supplied.)

Again reaffirming its position in *Stein* v. *New York,* 346 U. S. 156, 184-5, this court stated that "the detention and interrogation of a suspect as under the circumstances appears reasonable is not coercive," adding that it does not function as a "super-jury." *Ibid.* 180. This court has therefore properly adopted the position that its function is not to set aside a state court conviction on the ground that its underlying verdict is against the weight of the evidence.

Consistent with its position is this court's relatively recent denial of *certiorari,* 347 U. S. 956, and rehearing, *id.* 979, in *Palakiko* v. *Harper,* C. A. 9th Cir., 209 F. 2d 75, 84, 90-3, in which the court of appeals rejected one defendant's contention of "psychological coercion" where the record showed that the question was raised upon conflicting evidence sufficient to support the jury's verdict, even though the jury in its verdict may have been in error.

Admittedly the evidence in the record of the case at bar is highly conflicting, as found by the Supreme Court of Illinois. (Pet. br. 72.) But there is in this record evidence

supporting petitioner's conviction, the denial of the writ in his post-conviction hearing and its affirmance by the Illinois Supreme Court. Under these circumstances, this court should not reweigh that evidence and disturb the findings of two courts and a jury and their review by the highest court of this state.

II.

There is a complete absence of evidence in the record showing that the post-conviction trial judge did not read the original transcript on the question of the coerced confession. Therefore, the post-conviction trial judge cannot be presumed to have acted improperly.

Petitioner filed no written motion for a new trial and the record fails to show what grounds, if any, supported his motion. Accordingly, he cannot now urge error in this court.

Irrespective of the post-conviction trial judge's conduct and petitioner's failure regarding his motion for a new trial, the evidence in the record sustains the findings and judgment of the post-conviction trial judge and the findings and judgment of the original trial. Petitioner has therefore failed to show prejudice.

Petitioner while quoting a statement of the post-conviction trial judge, to-wit: "Well, I haven't seen the transcript yet," sets forth no evidence in his brief—and there is none in the record—affirmatively showing that the trial judge failed to read the original transcript in evidence upon

the post-conviction trial. Therefore, this court cannot and should not presume that the trial judge conducted the proceeding improperly and in violation of any constitutional prohibition.

Petitioner filed no motion for a new trial in writing and the record fails to disclose what grounds, if any, he urged in support of that motion which was denied by the trial judge. Moreover, at no time during the course of the post-conviction proceeding, before, at or after the original transcript in question had been admitted in evidence, did petitioner object to the course of the proceeding on the ground that the trial judge was not reading and had not read the original transcript. Accordingly, having invited error, if any, petitioner cannot now complain of an alleged violation of his constitutional rights predicated upon that error.

The evidence in the record, highly conflicting and virtually irreconcilable, nevertheless supports together with all reasonable inferences that might be drawn therefrom by the trial judge in the post-conviction proceeding, and by the jury and judge at the original trial, the findings and judgments that have been entered in these proceedings. Where the evidence sustains the findings and judgments attacked, this court should not disturb those findings and judgments. Petitioner has failed to show prejudice.

CONCLUSION.

For these reasons, petitioner has failed to show that the instant case is one in which this court should issue its discretionary writ of *certiorari*.

LATHAM CASTLE,
Attorney General of the
State of Illinois,
Supreme Court Building,
Springfield, Illinois,

JOHN L. DAVIDSON, JR.,
First Assistant Attorney General,

FRED G. LEACH,

EDWIN A. STRUGALA,
Assistant Attorneys General,
Of Counsel.